
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTENTIONAL,

Plaintiff-Respondent

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

On Appeal From Superior Court Of The State Of California
County of Los Angeles
The Honorable Ronald M. Sohigian

APPELLANT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT, VOLUME VI

1293-1593

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001293

EXHIBIT CC

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Attorneys for Defendants
AUTHOR SERVICES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BENT CORYDON,	)	CASE NO. C 694 401
)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION OF DEFENDANT AUTHOR
vs.	)	SERVICES, INC. TO DELAY OR
	)	PREVENT THE TAKING OF
CHURCH OF SCIENTOLOGY	)	CERTAIN THIRD PARTY
INTERNATIONAL, INC.,	)	DEPOSITIONS BY PLAINTIFF;
etc. et al.,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES; DECLARATIONS
Defendants.	)	OF LAWRENCE E. HELLER AND
	)	HOWARD SCHOMER IN
	)	SUPPORT THEREOF

AND RELATED CROSS-ACTIONS

DATE: November 16, 1989
TIME: 9:00 a.m.
DEPT: 44

TO: PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN.

PLEASE TAKE NOTICE that on November 16, 1989 at 9:00 a.m.,
or as soon thereafter as counsel can be heard, in Department 44
of the above-entitled Court located at 111 North Hill Street,
Los Angeles, California, defendant AUTHOR SERVICES, INC.
("defendant ASI" hereinafter) will move the Court for an order
to restrain plaintiff from taking certain third party
depositions.

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1 This application is made on the ground that great and
2 irreparable harm will result to defendant ASI unless a
3 restraining order is issued enjoining plaintiff from taking
4 certain third party depositions, or conditioning those
5 depositions upon a showing of relevance.

6 This Motion will be based upon this Notice, the attached
7 Memorandum of Points and Authorities, the pleadings, records and
8 files in this action, and such evidence as may be presented at
9 the hearing of the Motion.

10 Dated: October 7th, 1989

11 TURNER, GERSTENFELD, WILK & TIGERMAN

12
13 BY:

Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

Approximately two and one-half (2-1/2) years ago various Scientology entities, including some of the defendants herein, settled over a dozen cases involving hundreds of millions of dollars in alleged damages. Between six (6) to ten (10) of those cases were pending in this court and the Federal Court of the Central District of California.

One such case, which was not settled, entitled Wollersheim v. Church of Scientology of California, Case No. S011790 was intensely litigated in this very Court for close to six (6) years. That case culminated in a trial which lasted approximately eight (8) months, tying up one of this Court's courtrooms and judges exclusively for that period of time. During the course of the Wollersheim litigation, various issues were appealed, in one such instance resulting in a six (6) to eight (8) month stay of that litigation issued by the Honorable Sandra Day O'Connor, Justice of the United States Supreme Court. The Wollersheim litigation has recently been partly affirmed and partly reversed by the California Court of Appeals, and all parties expect that the appellate process will continue for at least another two (2) years.

Recognizing the tremendous time and financial burdens which litigation of this nature placed not only upon the litigants and their attorneys, but the courts involved as well, over a half dozen attorneys, including various California attorneys, entered into what can only be characterized as "herculean" settlement efforts. Those efforts ultimately resulted in the settlement of

1 virtually all .of the "Wollersheim-like" cases (where former
2 Scientology staff members or parishioners instituted litigation
3 against Scientology). Those settlements alleviated the truly
4 gargantuan time and financial resources which would have been
5 wasted in the absence of such a settlement. To effect these
6 settlements also required an exercise of good faith on behalf of
7 adverse litigants and attorneys who had been fiercely battling
8 for a number of years prior to entering into the settlements.

9 One of the key ingredients to completing these settlements,
10 insisted upon by all parties involved, was strict
11 confidentiality respecting: (1) the Scientology parishioner or
12 staff member's experiences within the Church of Scientology; (2)
13 any knowledge possessed by the Scientology entities concerning
14 those staff members or parishioners; and (3) the terms and
15 conditions of the settlements themselves. Peace has reigned
16 since the time the interested parties entered into the
17 settlements, all parties having exercised good faith in carrying
18 out the terms of the settlement, including the obligations of
19 confidentiality.

20 Comes now the plaintiff herein, BENT CORYDON, and acting
21 the role of a one man wrecking crew, he serves multiple
22 subpoenas in a wholesale manner upon these former plaintiffs
23 (and in some cases defendants); seeking material totally
24 irrelevant to the issues involved in his litigation.

25 Without any question, CORYDON's intent in serving these
26 various subpoenas requesting depositions and the production of
27 documents is to drive a wedge between these settling parties, in
28 an illegal attempt to extort a settlement of his own from the

1 defendants herein. Even a glance at the Request for Documents
2 served as part of CORYDON's subpoena duces tecum re deposition
3 upon these settling parties indicates that he has no interest in
4 any issues respecting plaintiff's case. Rather, CORYDON appears
5 to be on a mission to torpedo what can only be characterized as
6 good faith, effective settlements which have alleviated a vast
7 burden upon this Court. (See subpoena served upon one Homer
8 Schomer, an individual who had sued various Scientology entities
9 and this moving defendant in the Federal Court of the Central
10 District of California, attached hereto as Exhibit "A"').

11 Attached to these moving papers is the declaration of one
12 of the litigants who settled against Scientology, the aforesaid
13 Homer Schomer. Mr. Schomer's declaration, conclusively exhibits
14 that he has no evidence concerning CORYDON or CORYDON's
15 relationship with any Scientology entity, is perhaps the best
16 evidence of CORYDON's bad faith in attempting to effect the
17 subject deposition discovery.

18 The other third parties CORYDON has subpoenaed to deposition
19 that ASI knows of have even less information concerning CORYDON.
20 For instance one of the potential deponents who CORYDON has been
21 trying to serve is attorney Michael J. Flynn, a Boston lawyer
22 involved in most of the settlements which transpired some two
23 and one-half (2-1/2) years ago.

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25
26 ¹Even a cursory review of the documents requested in Mr.
27 Schomer's subpoena indicate that they have nothing to do with Mr.
28 CORYDON's case. They relate solely to the Settlement Agreement
and documents attendant to that settlement. It is inconceivable
that any of these documents could be relevant, even pursuant to
discovery standards, to any issue in the instant litigation.

CORYDON and his attorney, Toby L. Plevin, obviously feel that they have hit upon a weak spot within the Church of Scientology's resolve to effectively defend this litigation. Their tactic is to illegally threaten to compel by subpoena disclosure of confidential material irrelevant to the issues in his case. The fact that CORYDON's and Ms. Plevin's litigation tactics are in bad faith and an abuse of this Court's process appears to be of no avail to them.

CORYDON has been in litigation with most of the defendants herein for approximately eight (8) years. CORYDON sought dismissal of the litigation which he had previously instituted in the County of Riverside prior to the time that it was to go to trial in that Court, after he had litigated that case for over five (5) years. CORYDON thereafter instituted this litigation, clearly once again with no intent of going to trial on the merits, but rather in an attempt to "blackmail" these defendants through an attack upon the good faith settlements into which they had previously entered.

This moving party, (AUTHOR SERVICE, INC.) which was a party to at least one of the aforementioned settlements beseeches this Court to prevent CORYDON and/or his attorney from engaging in these unethical tactics under the guise of free wheeling discovery. These parties would ask this Court to issue a protective order preventing these depositions from going forward

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1 at least until CORYDON and his attorney have exhibited the
2 relevance of these depositions.

3 Dated: October 24, 1989

4 TURNER, GERSTENFELD, WILK & TIGERMAN

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6 BY: 

Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

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1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California and am a principal in the law firm of Turner, Gerstenfeld, Wilk & Tigerman. In said capacity, I am responsible for the defense of the within action on behalf of defendants AUTHOR SERVICES, INC. ("ASI") and BRIDGE PUBLICATIONS, INC. ("BPI"). Furthermore, I was the attorney for ASI with regard to certain settlements in which ASI was a settling party which are referred to in these moving papers. Accordingly, all of the following information is of my own personal knowledge and I am available and competent to personally testify thereto if necessary.

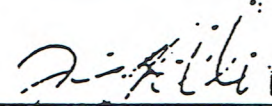
3. Settlement negotiations, which were not supervised by any court, were arduous and, as is often the case in these

1 instances, sometimes contentious. However, a "universal
2 settlement" was ultimately entered into between the numerous
3 parties. The universal settlement provided for non-disclosure
4 of all facts underlying the litigation as well as non-disclosure
5 of the terms of the settlements themselves. The non-disclosure
6 obligations were a key part of the settlement agreements
7 insisted upon by all parties involved.

8 4. The contractual non-disclosure provisions were the one
9 issue which was not debated by any of the parties or attorneys
10 involved. In the last two and one half (2-1/2) years the
11 settlements have been carried out in good faith by all parties.
12 I consider my contribution, as well as the contribution of the
13 other attorneys involved in the settlements, to have been of
14 great benefit to this and other Courts in that it alleviated
15 literally months upon months of trial time which would have been
16 necessary had the settlements not been properly effected.

17 I declare under penalty of perjury that the foregoing is
18 true and correct.

19 Executed this 13 day of November 1989, at Beverly Hills,
20 California.

21 
22 Lawrence E. Heller
23 Declarant
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DECLARATION OF HOWARD D. SCHOMER

I, Howard D. Schomer (also known as Homer Schomer),
declare as follows:

1) For a number of years I was involved in intense litigation with various Church of Scientology entities. I was represented by Michael J. Flynn, a Boston attorney, as well as the law firm of Contos & Bunch, A California law firm.

2) Approximately two and one half years ago my lawsuit was settled along with various other lawsuits and claims which were at that same time pending against Scientology. The settlements, to my knowledge, also included litigation that Scientology entities had pending against various persons and entities.

3) I am aware of the fact that the settlement negotiations stretched over a lengthy period of time and involved numerous attorneys, including those representing me. Since the time of the settlement there have been no problems between Scientology and me, we each appear to have gone our own ways. The other parties who I know, who settled their matters with Scientology at the time of my settlement, to my knowledge have also been at peace with Scientology.

4) I was recently subpoenaed to a deposition by BENT CORYDON in this case. I am not sure why I was subpoenaed since I have virtually no knowledge concerning Mr. Corydon

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2 and know nothing of his experiences within the Church of
3 Scientology.

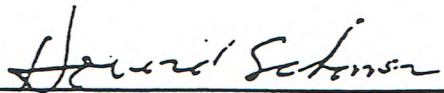
4 5) I believe I met Mr. Corydon on one brief occasion
5 while we were both in the Church of Scientology, either in
6 Florida or in Los Angeles. The meeting consisted of no more
7 than an introduction and a quick exchange of social
8 pleasantries.

9 6) I have no knowledge concerning Mr. Corydon's
10 experiences within the Church nor do I know anything about
11 what transpired between Mr. Corydon and Scientology after he
12 left the Church (which I am told was prior to the time I
13 left Scientology in December of 1982).

14 7) Since I left Scientology I have spoken to Mr.
15 Corydon on one or two occasions when he telephoned me asking
16 me for information that he could use in a book he was then
17 writing about Scientology. This was in late 1986, a number
18 of years after both Mr. Corydon and I had left Scientology.

19 I declare under penalty of perjury that the foregoing
20 is true and correct.

21 Executed this 28th day of October, 1989 at Pomona,
22 California.

23 
24 HOWARD SCHOMER
Declarant

25 * HE ALSO CAME TO MY APARTMENT APPROX DEC/1986
26 WHERE HE TAPED AN INTERVIEW FOR FACTS FOR HIS BOOK
27 FOR APPROX 2 HOURS. Howard Schomer
28 10-28-89

001304

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Boulevard, Suite 510, Beverly Hills, California 90211.

On November 1, 1989, I served the foregoing document described as NOTICE OF MOTION AND MOTION OF DEFENDANT AUTHOR SERVICES, INC. TO DELAY OR PREVENT THE TAKING OF CERTAIN THIRD PARTY DEPOSITIONS BY PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LAWRENCE E. HELLER AND HOWARD SCHOMER IN SUPPORT THEREOF by placing [] the original [x] a true copy thereof enclosed in sealed envelopes addressed as follows:

Toby Plevin, Esq., 6380 Wilshire Boulevard,
Suite 1600, Los Angeles, CA 90048

William Drescher, Esq., Wyman, Bautzer, Kuchel & Silbert
Two Century Plaza, 14th Floor,
2029 Century Park East, Los Angeles, CA 90067

Kendrick Moxon, Esq., Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028

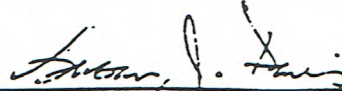
[] BY MAIL - I deposited such envelope in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary cause of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[x] BY PERSONAL SERVICE - I delivered such an envelope by hand to the offices of the addressee.

[x] (State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 1, 1989, at Beverly Hills, California.


Susan J. Davis 001305

001306

EXHIBIT DD

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Eric L. Dobberteen
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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

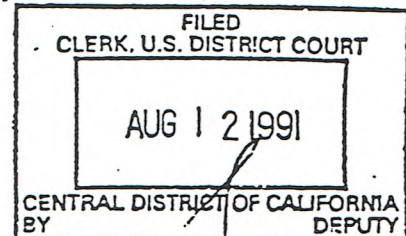
CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

vs.

C. PHILLIP XANTHOS; ALAN
LIPKIN; MARCUS OWENS; MARVIN
FRIEDLANDER; S. ALLEN
WINBORNE; ROBERT BRAUER;
JOSEPH TEDESCO; CHARLES
RUMPH; RAYMOND JUCKSCH;
MELVYN YOUNG; CARL CORSI;
GREGORY ROTH; WILLIAM
CONNETT; KEITH ALAN KUHN;
CHARLES JEGLIKOWSKI; MELVIN
BLOUGH; RODERICK DARLING;
and DOES 1 - 200,

Defendants.



No.

COMPLAINT FOR DAMAGES FOR AND
INJUNCTIVE RELIEF FROM:

1. FOURTH AMENDMENT VIOLATIONS;
2. FIRST AMENDMENT VIOLATIONS;
3. DUE PROCESS VIOLATIONS UNDER
THE FIFTH AMENDMENT; AND
4. EQUAL PROTECTION VIOLATIONS
UNDER THE FIFTH AMENDMENT

JURY TRIAL DEMANDED

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JURISDICTION AND VENUE

1
2 1. As this action seeks damages for violations of
3 the United States Constitution brought under the authority of
4 Bivens v. Six Unknown Agents of Federal Bureau of Narcotics,
5 403 U.S. 388 (1971), this Court has subject matter
6 jurisdiction pursuant to 28 U.S.C. § 1331.

7 2. Venue is proper in this Court pursuant to 28 U.S.C.
8 § 1391(b) in that jurisdiction is not founded solely on
9 diversity of citizenship and the claims arose in this judicial
10 district. Venue is also proper in this Court pursuant to 28
11 U.S.C. § 1391(e) in that this is a civil action in which all
12 the defendants are or were employees of a United States agency,
13 some of whom are residents of this judicial district, which is
14 the judicial district in which plaintiff resides and in which
15 the causes of action set forth arose.

PARTIES

16
17 3. Plaintiff Church of Scientology International ("the
18 Church") is a not for profit religious corporation organized
19 and existing under the laws of the State of California, with
20 its principal place of business in Los Angeles, California. In
21 accordance with the ecclesiastical policies of the Scientology
22 religion, plaintiff is the Mother Church of the Scientology
23 religion, an internationally recognized religion engaged solely
24 in spiritual, charitable, humanitarian and community-oriented
25 endeavors intended to enhance adherents' spiritual knowledge of
26 themselves and their Creator. The Scientology religion has
27 more than 8 million members and Scientology Churches,
28 Missions and groups exist in 90 nations around the world.

1 4. Except for three who have retired from government
2 service since performing the acts hereinafter averred, the
3 defendants are, and at all relevant times were, employees of
4 the Internal Revenue Service ("IRS"). The matters averred in
5 this Complaint are largely drawn from information only recently
6 discovered by the Church in the course of Freedom of Information
7 Act ("FOIA") litigation.

8 5. As the conduct which gives rise to the Church's claims
9 of constitutional violations occurred within different divisions
10 and offices of the IRS, the defendants are grouped within their
11 respective divisions for the purposes of the following
12 identifying averments:

13 A. Los Angeles Criminal Investigation Division.

14 i. Defendant Philip Xanthos ("Xanthos") is,
15 and at all relevant times was, a Branch Chief of
16 the Los Angeles Criminal Investigation Division of
17 the IRS ("LA CID"). Upon information and belief,
18 Xanthos resides in this judicial district.

19 ii. Defendant Alan Lipkin ("Lipkin") is, and
20 at all relevant times was, a Group Manager within
21 LA CID. Upon information and belief, Lipkin
22 resides in this judicial district.

23 B. National Office Exempt Organizations.

24 i. Defendant Marcus Owens ("Owens") is
25 currently the Director of the IRS National
26 Office Exempt Organizations ("EO") Technical
27 Division, and was, at all relevant times
28 an official of the EO Technical Division. Upon

1 information and belief, Owens resides in the State
2 of Maryland.

3 ii. Defendant Marvin Friedlander
4 ("Friedlander") is, and at all relevant times was,
5 an IRS Senior Conferee Reviewer in the EO
6 Technical Division. Upon information and belief,
7 Friedlander resides in the State of Maryland.

8 iii. Defendant S. Allen Winborne ("Winborne")
9 was at all relevant times until approximately
10 1987 IRS Assistant Commissioner for Employee Plans
11 and Exempt Organizations. Upon information and belief,
12 Winborne resides in the State of Maryland.

13 iv. Defendant Robert Brauer ("Brauer") was
14 at all relevant times from approximately
15 1987 to and including approximately December, 1990, IRS
16 Assistant Commissioner for Employee Plans and Exempt
17 Organizations. Since in or about January, 1991,
18 Brauer has been the IRS District Director in
19 Pittsburgh, Pennsylvania. Upon information and
20 belief, Brauer resides in the Commonwealth of
21 Pennsylvania.

22 v. Defendant Joseph Tedesco ("Tedesco") was
23 at all relevant times until approximately 1987, Chief
24 of the National Office Exempt Organizations
25 Technical Division. Since in or about 1987,
26 Tedesco has been in retirement. Upon information
27 and belief, Tedesco resides in the Commonwealth of
28 Virginia.

1 vi. Defendant Charles Rumph ("Rumph") was
2 at all relevant times until approximately 1986,
3 an attorney in the Tax Litigation Division, Office of
4 Chief Counsel at the National Office. Although he did
5 not work in EO, plaintiff is informed and believes
6 that Rumph worked in conjunction with the other EO
7 defendants in doing the acts hereinafter averred.
8 Since in or about 1986, Rumph has been in
9 retirement. Upon information and belief, Rumph
10 resides in the District of Columbia.

11 vii. Defendant Roderick Darling ("Darling")
12 is, and at all relevant times was, an IRS tax law
13 specialist in the EO Technical Division. Upon
14 information and belief, Darling resides in the
15 State of Maryland.

16 C. Los Angeles Exempt Organizations Division.

17 i. Defendant Raymond Jucksch ("Jucksch") is,
18 and at all relevant times was, a Group Manager
19 within the Los Angeles Exempt Organizations
20 Division of the IRS ("LA EO"). Upon information
21 and belief, Jucksch resides in this judicial
22 district.

23 ii. Defendant Melvyn Young ("Young") is, and
24 at all relevant times was, a Revenue Agent within
25 LA EO. Upon information and belief, Young resides
26 in this judicial district.

27 iii. Defendant Carl Corsi ("Corsi") was at
28 all relevant times to and including

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1 July, 1989, a Revenue Agent within LA EO.

2 Since in or about July, 1989, Corsi has been
3 in retirement. Upon information and belief, Corsi
4 resides in this judicial district.

5 D. Los Angeles District Counsel Office.

6 i. Defendant Charles Jeglikowski
7 ("Jeglikowski") is, and at all relevant times was,
8 an attorney within the IRS District Counsel's
9 office located in Thousand Oaks, California. Upon
10 information and belief, Jeglikowski resides in
11 this judicial district.

12 ii. Defendant Gregory Roth ("Roth") is, and
13 at all relevant times was, an attorney within the
14 IRS District Counsel's office located in Thousand
15 Oaks, California. Upon information and belief,
16 Roth resides in this judicial district.

17 E. Los Angeles District Office.

18 i. Defendant William Connett ("Connett")
19 was at all relevant times to and including
20 January, 1986, District Director of the Los
21 Angeles District Office of the IRS. Since in or
22 about 1987, Connett has been the IRS
23 Representative in Paris, France, where, on
24 information and belief, he now resides.

25 F. IRS National Office Internal Security
26 Division.

27 i. Defendant Keith Alan Kuhn ("Kuhn") is,
28 and at all relevant times was, Chief of the

1 Investigations Branch of the Internal Security
2 Division of the Office of the Chief Inspector of
3 the IRS. Upon information and belief, Kuhn
4 resides either in the State of Maryland or the
5 Commonwealth of Virginia.

6 G. St. Petersburg, Florida Exempt Organizations
7 Division.

8 i. Defendant Melvin Blough ("Blough") is, and
9 at all relevant times was, a Revenue Agent within
10 the Exempt Organizations Division of the St.
11 Petersburg, Florida office of the IRS. Upon
12 information and belief, Blough resides in the
13 state of Florida.

14 6. Upon information and belief, IRS employees other than
15 those named as defendants in this action performed acts which
16 are unlawful and unconstitutional in connection with the facts
17 set forth in this complaint. The Church will seek leave of
18 Court to amend this complaint when the IRS employees not named
19 as defendants, but whose conduct warrants their inclusion as
20 defendants in this action, are identified.

21 NATURE OF PLAINTIFF'S CLAIMS

22 7. By this action, the Church seeks damages for
23 violations of its First, Fourth, and Fifth Amendment rights
24 arising from the conduct of the defendants and others within
25 the Internal Revenue Service. While this action focuses on
26 recent events, it is the culmination of three decades of IRS
27 coercion in violation of the Free Exercise Clause of the First
28 Amendment, discriminatory treatment in violation of the

1 Establishment Clause of the First Amendment and the Equal
2 Protection component of Due Process under the Fifth Amendment,
3 as well as the denial of procedural Due Process rights in
4 violation of the Fifth Amendment, and actions in violation
5 of the Church's Fourth Amendment rights.

6 8. Although the IRS has withheld the vast majority of
7 documents requested by Churches of Scientology under the FOIA,
8 the limited FOIA information recently discovered by the Church
9 through the production of documents and testimony demonstrates
10 the actionable conduct hereinafter averred. This action,
11 moreover, does not arise in a vacuum. It is an outgrowth of
12 IRS conduct that includes:

13 a. Efforts by the IRS' Chief Counsel's
14 office to persuade at least one municipal
15 authority to find "local statutes and ordinances
16 available as tools to curtail or close down"
17 Scientology Churches;

18 b. Employment of "plants" to infiltrate
19 Scientology Churches to obtain copies of Church
20 records;

21 c. Recommendations of the IRS Chief Counsel
22 that "defining church in regulations is one method
23 to attack Scientology," which recommendation was
24 followed by the formulation of such a definition
25 in General Counsel Memorandum 36078 entitled
26 "Church of Scientology" (later promulgated as
27 Revenue Ruling 76-415);

28 d. Targeting the Church of Scientology as

1 "subversive," and conducting non-tax-related
2 surveillance and intelligence gathering that a
3 United States Senate Subcommittee would later find
4 was "used to stigmatize, to set a group of
5 individuals and organizations apart as somehow
6 inherently suspect ..." and which a Senate Select
7 Committee found to be "an effort to employ tax
8 weapons for essentially nontax purposes";

9 e. IRS documents which refer to the
10 Scientology religion as "religious bunco" and a
11 "grab-bag of philosophical voodooism," as well as
12 IRS tape recordings of witness interviews in which
13 defendants Young, Corsi and Roth referred to
14 Scientologists as "crazy devotees," characterized
15 Scientology's religious services as a "dog and
16 pony show," compared adherence to the Scientology
17 faith to drug addiction, and called the religion
18 itself a "facade"; and

19 f. Encouragement given by Corsi, Young and Roth
20 to individuals pursuing civil cases involving claims for
21 damages against plaintiff and other Scientology Churches.

22 9. The claims for relief asserted in this action arise
23 from the demise of a two-year criminal investigation of
24 plaintiff, other Scientology Churches, and individual
25 Scientologists that produced no indictments, no charges, and
26 nothing more than the refusal of the Department of Justice to
27 take any action with regard to that lengthy investigation. In
28 the aftermath of that investigatory debacle, defendants, as is

1 more fully averred later in this complaint, embarked upon a
2 course of conduct which has included:

3 a. EO employees demanding documents from
4 plaintiff and other Scientology Churches
5 ostensibly to evaluate applications for exemption
6 under 26 U.S.C. § 501(c)(3), while in reality
7 making such demands so that those documents could
8 be turned over to IRS criminal investigators in
9 violation of the Fourth Amendment;

10 b. Inauguration of nationally and
11 locally coordinated campaigns to single out
12 plaintiff and other Churches of Scientology as
13 targets for tax inquiries because they were
14 Churches of Scientology, and to use such inquiries
15 as a means to generate otherwise unavailable tax
16 liabilities such as under the Federal Insurance
17 Contribution Act and the Federal Unemployment Tax
18 Act in violation of the Establishment and Free
19 Exercise Clauses of the First Amendment and the
20 Equal Protection component of the Due Process
21 Clause of the Fifth Amendment; and

22 c. Embarking on a nationally and
23 locally coordinated campaign of collections
24 activity which arbitrarily and capriciously
25 freezes and attempts to freeze bank accounts of
26 plaintiff and other Scientology Churches for
27 alleged tax obligation of still other Scientology
28 Churches without notice and without any

1 opportunity to be heard before seizing plaintiff's
2 property in violation of the Due Process Clause of
3 the Fifth Amendment.

4 FIRST CLAIM FOR RELIEF

5 (For First, Fourth and Fifth Amendment Violations by
6 Defendants Xanthos, Lipkin, Owens, Friedlander,
7 Darling, Winborne, Tedesco, Rumph, Jucksch)

8 10. The Church repeats and realleges each and every
9 averment set forth in paragraphs 1 through 9, inclusive.

10 11. The Scientology religion has been in existence for
11 nearly four decades. From its earliest days, it has been a
12 target of IRS scrutiny and hostility. After years of
13 controversy and litigation, the IRS agreed with various
14 Churches of Scientology to conduct an examination of a
15 representative church and issue an exemption ruling based upon
16 that examination for the representative church and all others
17 similarly situated.

18 12. The IRS, for 25 consecutive days in March and April
19 1975, conducted an exhaustive examination of the Church of
20 Scientology of Hawaii ("the Hawaii Church"), addressing every
21 aspect of that church's operations, including Scientology
22 beliefs and practices. As a result of that examination, Church
23 of Scientology of Hawaii and twelve other Scientology churches
24 were granted exemptions under 26 U.S.C. § 501(c)(3).

25 13. The grant of exemption to the Hawaii Church followed
26 an unsuccessful attempt by the IRS to employ a litigation tactic
27 appropriately described as "harass and moot" to avoid judicial
28 adjudication of the exemption issue. When the Hawaii Church

1 filed suit contesting the IRS' 1969 denial of exemption, the
2 IRS tendered a refund of the taxes to avoid an unfavorable
3 court decision. When the Church refused the refund and pressed
4 for a judicial determination, the IRS moved to dismiss claiming
5 that the issue had been rendered moot. After the Ninth Circuit
6 rejected this litigation ploy, the IRS settled the case and
7 later granted exemption. The IRS, however, continued to resist
8 applications for exemption by Scientology churches despite the
9 fact that its only thorough, comprehensive examination of any
10 church had resulted, begrudgingly, in more than a dozen
11 exemptions.

12 14. Exemption applications for plaintiff Church of
13 Scientology International, Church of Spiritual Technology and
14 Religion Technology Center were filed with the Internal Revenue
15 Service in 1983. These exemption applications were forwarded
16 to the IRS National Office by the local offices where they were
17 filed. Responsibility for the exemption applications resided
18 with defendants Owens, Friedlander, and Tedesco of the
19 National Office EO working in conjunction with defendant Rumph
20 of the Office of the Chief Counsel. EO requested additional
21 information of the filing entities. Discussions between Church
22 counsel and the IRS personnel processing the applications began
23 with regard to the IRS' requests for additional information,
24 and at the request of those defendants the applicants provided
25 further information to the IRS based on the belief that the
26 newly formed churches all qualified for exemption and that the
27 IRS was acting in good faith in the negotiations. EO letter
28 requests to plaintiff and the other applicants dated July 30

1 and October 5, 1984 and January 18 and April 22, 1985 requested
2 the applicants comment on specific allegations made by LA CID
3 informants that were at the heart of the ongoing CID
4 investigation. FOIA records and discovery in FOIA litigation
5 reveal a continuous flow of information from EO to LA CID.

6 15. It is now clear, however, that defendants and the IRS
7 were not dealing in good faith, but rather, were merely asking
8 for and receiving voluminous financial and other records from
9 plaintiff and the other churches without any intention of ever
10 granting any section 501(c)(3) exemptions and as an unlawful
11 means of obtaining data for LA CID. The use of the exemption
12 process to obtain information for a criminal investigation
13 deprived plaintiff of its rights guaranteed by the First,
14 Fourth and Fifth Amendments to the United States Constitution,
15 and violated specific IRS rules designed to protect those
16 rights. The Internal Revenue Manual contains specific
17 provisions which require EO to "immediately suspend" an inquiry
18 if EO learns that "an assigned case involves a taxpayer who is
19 the subject of a criminal investigation." The EO agents
20 responsible for plaintiff's exemption application did not
21 suspend the civil proceeding, but instead continued to use it
22 as a means for gathering information for CID.

23 16. Between 1984 and 1986, LA CID conducted an extensive
24 criminal investigation of plaintiff, other Scientology
25 churches, and individual Scientologists, under the auspices of
26 defendant Connett, the then-District Director, defendant
27 Xanthos, the LA CID Branch Chief and defendant Lipkin, the
28 assigned LA CID Group Manager. That investigation included the

1 use of mail covers, paid informants, summonses to dozens of
2 financial institutions and church members, and infiltration of
3 Scientology's ecclesiastical hierarchy. The infiltration of
4 the Church was planned as an undercover operation by the
5 LA CID along with former Church member Gerald Armstrong, who
6 planned to seed church files with forged documents which the
7 IRS could then seize in a raid. The CID actually planned to
8 assist Armstrong in taking over the Church of Scientology
9 hierarchy which would then turn over all Church documents to
10 the IRS for their investigation. The CID further coordinated
11 this plan with the Ontario Provincial Police in Canada, through
12 direct contacts and exchange of information, hoping that
13 through simultaneous assaults the "momentum of . . . charges
14 will cause [Scientology] to collapse." Thus, the documents
15 being channelled from EO to CID were being used for the
16 unlawful purpose of forwarding criminal investigations in both
17 the United States and in Canada.

18 17. That criminal investigation, the results of which
19 were ultimately rejected in full by the Department of Justice,
20 was doomed from its inception because it was based upon a
21 faulty premise -- that plaintiff and the other Churches were
22 engaging in criminal conduct (conspiracy to interfere with the
23 collection of taxes) by the mere fact that they had applied for
24 section 501(c)(3) exemptions. In other words, at the time that
25 EO was allegedly processing the exemption applications, the IRS
26 had already made a determination that the exemption
27 applications were criminal instruments because the applying
28 churches had already been prejudged as non-exempt.

1 18. The IRS personnel charged with responsibility for the
2 exemption applications -- defendant Friedlander, and his
3 superiors Owens, Tedesco and Winborne -- were fully aware of
4 the ongoing criminal investigation, yet despite the fact that
5 the Fourth and Fifth Amendment and IRS written procedures
6 mandate that all civil IRS proceedings concerning a given tax
7 period be suspended during the time in which a criminal
8 investigation of that same period is in progress, EO personnel
9 continued to request and receive information and documents
10 from plaintiff and the other Churches and delivered such
11 information and documents to defendants Xanthos, Lipkin and the
12 other LA CID personnel conducting the criminal investigation.

13 19. In late July 1984, the Church learned through the
14 media that LA CID had initiated a criminal investigation
15 relating to Scientology organizations and individuals. Leaks
16 to the media regarding the CID investigation had already
17 resulted in unfavorable and harmful media reports, prior to the
18 time when the organizations and individuals became aware that
19 they were under investigation. In response to one such
20 article, Church counsel contacted defendant Connett who
21 confirmed that an investigation of Scientology's founder, L.
22 Ron Hubbard, and another Scientologist was in progress, but who
23 expressly misrepresented to counsel that the criminal
24 investigation was separate and distinct from the ongoing
25 exemption application process, and encouraged the Church to
26 continue the application process. Connett, with the assent
27 of defendants Friedlander and Winborne, told the Church's
28 attorneys that the CID investigation did not directly involve

1 any of the applicants and might not lead to charges being
2 filed. He stated that in that case, it would not make sense to
3 drop the existing team which was developing the exemption
4 applications. The truth of the matter was that defendants
5 Friedlander and Tedesco were turning material over to LA CID,
6 either directly, through Connett, or through the Los Angeles
7 Exempt Organizations Division (which was staffed by defendants
8 Jucksch, Corsi, and Young).

9 20. Connett did not merely misrepresent the status of the
10 CID investigation to the Church. He also set into motion the
11 coordination between the National Office employees processing
12 the exemption applications, and the agents of the CID. In
13 January 1985, Friedlander contacted Xanthos and his superior,
14 CID Chief Ronald Saranow, at the suggestion of defendant
15 Connett for the purpose of obtaining information from CID's
16 files. Friedlander informed defendant Tedesco of his plan to
17 travel to Los Angeles along with defendant Rumph, for the
18 purpose of reviewing CID's materials as well as CID's "draft
19 prosecution letter." In order to prevent plaintiff and the
20 other churches from learning of the CID investigation,
21 Friedlander proposed that EO and CID could mutually coordinate
22 when or if any CID material would be included in any
23 applicant's administrative file to preclude premature
24 disclosure. Tedesco approved of the trip, as did defendant
25 Winborne, who stated they should leave when ready.

26 21. In approximately February 1985, during the course of
27 EO's information gathering on behalf of LA CID, defendants
28 Friedlander and Rumph traveled to Los Angeles and met with

1 defendant Lipkin to acquire information about the criminal
2 investigation and to learn of the criminal investigators' areas
3 of interest so that EO and LA CID might work together more
4 efficiently. At that time, Friedlander was provided with a
5 draft copy of a "Special Agent's Report" ("SAR") prepared by the
6 LA CID defendants, Xanthos' and Lipkin, requesting prosecution of
7 various Scientology Churches, entities, members and their
8 counsel, and setting forth the theories of prosecution.
9 Friedlander thereafter sought information from plaintiff and the
10 other applicants relating to areas addressed in the draft SAR,
11 representing that the information was necessary for EO's
12 evaluations of the pending exemption applications. The
13 information requested by Friedlander was supplied to EO, and
14 thereafter forwarded by EO to LA CID to assist in the criminal
15 investigation. Friedlander kept defendants Owens, Tedesco and
16 Winborne informed regarding the provision of information by EO
17 to LA CID. Moreover, Friedlander, knowing that he should have
18 suspended the EO examination in light of the pending CID
19 investigation, consulted agents of LA CID as well as Tedesco,
20 Winborne and others concerning the requirement of suspending
21 the EO proceeding. Friedlander was specifically directed to
22 continue the exemption process, and he did so.

23 22. Following Friedlander's return from viewing CID's
24 files in Los Angeles, EO employee Roderick Darling communicated
25 with Friedlander regarding the use of the CID materials.
26 Darling suggested that EO could pose questions to the Church
27 based on certain documents in CID's files, since it would not
28 involve reliance on any testimony solicited by CID and,

1 therefore, would not expose the IRS to the charge that the IRS
2 EO function had allied itself with CID or was tainted by CID's
3 conspiracy theories. Darling also informed Friedlander that
4 CID hoped that EO would somehow be able to extract information
5 from the Church, and that EO would be able to turn up something
6 which CID had not been able to. In March 1985, defendants
7 Lipkin and Connett attended a meeting at the National Office to
8 discuss the pending exemption applications with defendants
9 Friedlander, Winborne, Rumph and Tedesco. They discussed the
10 possible timing of denials of exemption to coincide with the
11 CID's prosecution. Connett also assured the EO defendants that
12 CID would provide them with the Special Agent's Report when it
13 was completed.

14 23. Numerous instances of the provision of information
15 from defendants responsible for EO functions to defendants
16 responsible for LA CID functions are presently known to
17 plaintiff through FOIA requests, FOIA litigation and discovery
18 in such actions, and numerous other instances of such unlawful
19 acts are believed to exist but have not yet been discovered by
20 plaintiff. The IRS has even attempted to thwart such Freedom
21 of Information Act discoveries by improperly withholding
22 documents and portions thereof concerning the unlawful
23 collusion between EO and CID which should have been released.
24 The IRS has improperly asserted that records revealing the
25 collusion were not discloseable based on the IRS' "deliberative
26 process privilege," and thereby seeking to keep its unlawful
27 acts from coming to view.

28 24. To prevent the revelation of the unlawful and

1 unconstitutional collusion between EO and LA CID, Friedlander
2 destroyed copies of memoranda and notes taken during his visits
3 to LA CID, and on information and belief, notes of subsequent
4 telephone communications with Lipkin and others. Friedlander
5 also destroyed documents he requested from LA CID because he did
6 not want to place them in the application files and thereby be
7 required to supply them to the applicant churches. Darling
8 also supplied documents obtained during EO's examination to LA
9 CID for its use in its criminal investigation and received a
10 copy of the draft SAR.

11 25. The initial conduit for transmitting information and
12 documents from the Church through the EO in Washington, D.C.
13 (defendants Owens, Tedesco, Rumph, Darling and Friedlander) to
14 LA CID (defendants Xanthos and Lipkin, under the supervision of
15 defendant Connett) was the Los Angeles Exempt Organizations
16 Division (defendants Jucksch, Corsi and Young). At some time
17 during the concurrent EO examination and LA CID criminal
18 investigation, defendant Connett agreed to assume personal
19 responsibility for transmitting the material from EO to LA CID.

20 26. Plaintiff and the other applicant Churches were
21 unaware that EO and LA CID were colluding with one another
22 behind the scenes, and continued to cooperate with EO personnel
23 in conducting the examinations which the IRS represented were
24 being conducted in good faith. Any potential suspicions by
25 plaintiff or the other Churches that the information gathering
26 may not have been completely for civil purposes, were allayed by
27 the receipt of a letter to CST dated July 26, 1985, written by
28 Friedlander and Darling, in which they stated: "We assure you

1 that our questions (in previous correspondence) have heretofore
2 been solely directed at developing the applications to the
3 point where your purpose and activities have been sufficiently
4 described in accordance with the standards for issuing rulings
5" These representations were fraudulent, as the SAR,
6 written 2 months earlier, unequivocally called for denial of
7 tax exemption.

8 27. Notwithstanding that representation, EO continued to
9 gather information for use by LA CID. A copy of the SAR
10 obtained in FOIA litigation makes it clear that the purpose of
11 the defendants who participated in the EO - LA CID collusion was
12 for defendants to combine their efforts to create "another round
13 of denial of exempt status," a circumstance which the SAR states
14 was intended to cause "a final halt to" and "the ultimate
15 disintegration of" the Scientology religion.

16 28. In September of 1985, plaintiff and the other
17 applicants learned that LA CID had forwarded a recommendation
18 for criminal prosecution to the IRS LA District Counsel's
19 office, and that at least RTC and CST were named as targets of
20 the investigation. On information and belief, plaintiff was
21 also a target of the criminal investigation. By December 1985,
22 the District Counsel's office had concluded that the SAR did
23 not warrant immediate prosecution and forwarded the matter to
24 the Justice Department with a request that an investigative
25 grand jury be convened.

26 29. The request for a grand jury coincided with the
27 January 7, 1986 issuance of letters by the IRS National Office
28 proposing the denial of exempt status to plaintiff, RTC and

1 CST. Defendant Friedlander made the decision to issue those
2 letters at that time. At the same time, January of 1986,
3 defendants Jucksch, Corsi and Young, on behalf of the IRS' LA
4 Exempt Organizations Division, prepared to launch a third prong
5 of attack (to coincide with the grand jury request and the
6 proposed exempt status denials) in the form of examinations
7 conducted by LA EO. Those examinations were an outgrowth of
8 the stalled LA CID investigation, and LA EO defendant Corsi had
9 held a series of meetings during the course of the criminal
10 investigation with LA CID defendant Xanthos.

11 30. The three prongs of attack which defendants had
12 coordinated to begin in January 1986 were all delayed, first,
13 because the Justice Department did not convene a grand jury
14 and, second, because plaintiff, RTC and CST submitted an
15 approximately 500-page protest of the proposed exemption
16 denials.

17 31. By October 1986, LA CID's criminal investigation of
18 the various Scientology Churches and individuals was
19 moribund, and since the Justice Department had refused to
20 pursue the matter before a grand jury, the case was about to be
21 officially closed. By that time, the protests to the proposed
22 denial of exempt status had bogged down the efforts of the EO
23 defendants. In October 1986, with the investigation about to
24 close, agents of LA CID attempted to utilize the news media to
25 revive the investigation. The October 1986 issue of "Forbes"
26 magazine contained an article by writer Richard Behar which
27 falsely stated that the CID investigation was "gathering
28 momentum." On information and belief, these and other

1 allegations which appeared in the Forbes article were "leaked"
2 to Behar by defendants Lipkin with the knowledge and consent of
3 defendant Xanthos to encourage the Department of Justice to
4 more seriously consider the allegations set forth in the
5 Special Agents Report. Indeed, Behar openly applauded the
6 SAR's stated goal - the "ultimate disintegration" of the
7 Church - in a recent Time magazine article. Defendant Owens,
8 in turn, was quoted by Behar in the recent article, stating
9 that there have been thousands of IRS agents involved in Church
10 related tax matters for years. The IRS also apparently
11 provided Behar with information concerning the Church's FOIA
12 cases, as Behar was able to report on the number of such
13 matters filed. Thus, the IRS' pattern of utilizing media to
14 flank its actions against the Church continues to the present.

15 32. In November 1986, the Department of Justice rejected
16 the request made by LA CID through LA District Counsel to
17 convene a grand jury to continue the criminal investigation.
18 The LA CID defendants, however, remained undaunted, and further
19 sought to exploit their collusive connection to the EO and the
20 LA EO defendants. In that regard:

21 a. On or before December 16, 1986, defendant
22 Lipkin of LA CID met with defendant Corsi of LA EO
23 to arrange for a meeting between Lipkin and
24 Corsi's Group Manager, defendant Jucksch. At that
25 December meeting, Lipkin discussed the LA CID
26 files on the Church with Corsi and explained that
27 defendant Friedlander of National Office EO had
28 reviewed those files;

1 b. Defendants Lipkin, Corsi, and Jucksch met
2 on January 5, 1987 to coordinate further actions
3 with respect to plaintiff and other Scientology
4 Churches;

5 c. In conjunction with National Office EO,
6 LA CID and LA EO planned, coordinated, and
7 implemented a plan to audit fourteen Churches of
8 Scientology and two related trusts, all already
9 exempt; and

10 d. LA District employees were invited to the
11 National Office to review the data submitted by
12 plaintiff, CST and RTC during the exemption
13 application process.

14 Plaintiff and the other applicants, unaware of the ongoing
15 collusion among the EO, LA EO, and LA CID defendants, continued
16 to negotiate with EO to attain rulings of exempt status under 26
17 U.S.C. § 501(c)(3). Those negotiations continued throughout
18 1987.

19 33. As a result of the conduct of the defendants, and
20 each of them, plaintiff has been coerced into diverting
21 resources and attention away from the pursuit of its religious
22 beliefs in order to defend itself against defendants' actions.
23 Plaintiff also has been burdened in the free exercise of its
24 religious beliefs by the intrusion of defendants into its
25 records practices, beliefs and ecclesiastical structure and
26 policies by the defendants as is hereinabove averred. Such
27 coercion and burden each constitutes a violation of the Free
28 Exercise Clause of the First Amendment to the United States

1 Constitution.

2 34. The collusion between the EO defendants, the LA EO
3 defendants, and the LA CID defendants by which plaintiff was
4 misled to believe that documents sought by defendants were for
5 the purpose of a good faith exemption examination (rather than
6 a sham exemption examination) when in fact such documents were
7 being funnelled directly to criminal investigators, constitutes
8 a violation of the Fourth Amendment to the United States
9 Constitution.

10 35. The defendants, and each of them, by their conduct
11 alleged herein, have singled out plaintiff for invidious
12 discrimination in the application of the laws of the United
13 States on the basis of plaintiff's religious affiliation, in
14 violation of the Equal Protection component of the Due Process
15 Clause of the Fifth Amendment to the United States Constitution.

16 36. The conduct of the defendants, and each of them, has
17 been arbitrary and capricious, and has resulted in the
18 deprivation of plaintiff's property. Such conduct, motivated
19 by religiously rooted bias and prejudice, is a violation of the
20 Due Process Clause of the Fifth Amendment to the United States
21 Constitution.

22 37. Plaintiff has been damaged and continues to be
23 damaged thereby in an amount to be proven at trial. That
24 amount is not presently capable of precise calculation but
25 is believed to be in excess of \$20,792,850 which represents
26 direct expenditures by plaintiff. Plaintiff has also suffered
27 consequential and resulting damages in an amount to be proven
28 at trial, but which is in an amount in excess of \$100 million.

SECOND CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

38. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 35, inclusive.

39. On or about December 4, 1987, defendant Friedlander informed Church representatives that the IRS insisted upon a "limited" review of the financial records of plaintiff RTC, and CST for 1986, to be conducted by the Los Angeles District Office, for the purpose of verifying the integrity of their records and to rule out the existence of any private inurement, the only remaining potentially disqualifying factor. In early 1988, defendants Friedlander and Brauer assured plaintiff of favorable exemption determinations as long as the limited review did not uncover inurement or an inadequate accounting system.

40. Those representations were false. Documents released by the IRS in later FOIA litigation included drafts of final denial letters for plaintiff, RTC and CST written by Friedlander and Darling in January of 1988, at the very time when defendants Brauer and Friedlander were representing to Church counsel that exemption was imminent. In fact, the representations were no more than a ploy to entice plaintiff and the other Scientology Churches to continue turning over detailed information to the IRS in violation of the Church's civil and constitutional rights.

41. On March 17, 1988, the National Office provided plaintiff, RTC and CST with new letters of assurance stating that the IRS was prepared to conduct a review so that "we may

1 complete favorable consideration" of the exemption
2 applications. The letters further stated that the purpose of
3 the review was to "determine the integrity of your financial
4 and accounting systems" and "verify that no part of your net
5 earnings inures to the benefit of any private shareholder or
6 individual and that there, is no other disqualifying activity."
7 Each Church executed its letter of assurance, permitting the
8 extremely unusual process of an on-site document review of
9 plaintiff's records to proceed.

10 42. Extensive, on-site reviews began, starting with CST,
11 in March of 1988. Despite the initial statement by Friedlander
12 that the review would be limited, the Los Angeles office
13 initially assigned four full-time agents to the review, and
14 after eight weeks, another four full-time agents were added.
15 This staffing represented 48 personnel weeks or roughly one
16 year of IRS time. Friedlander and his superior, defendant
17 Owens, testified that these examinations were the "most
18 sweeping" examinations these officials had witnessed, "far
19 exceeding" any they had previously experienced, and that the
20 volume of information provided was "truly record-breaking."

21 43. The examination of CST was completed on June 2, 1988.
22 At that time, the IRS Branch Chief responsible for the review
23 stated that the agents had found nothing to show inurement and
24 affirmed that, as to CST, "we have no concerns at this time."
25 These statements confirm the findings of a memorandum written by
26 defendant Friedlander in November 1987 which stated that private
27 benefit ceased to be an issue following the death of L. Ron
28 Hubbard in January 1986. Following the completion of the

1 examination fo CST, the IRS Los Angeles office began its review
2 of RTC, which was completed in June 1988 -- again with no
3 concerns raised by the agents.

4 44. On June 22, 1988, the Church discovered that in May
5 1988, defendants Corsi, Young and Roth secretly interviewed two
6 disaffected Scientologists, Richard and Vicki Aznaran, who were
7 suing CSI and other Scientology churches. Prior to leaving the
8 Scientology faith in 1987, Vicki Aznaran had served as one of
9 RTC's officers. These defendants had engaged in deceitful
10 conduct designed to prevent the Churches from discovering that
11 the IRS investigation was actually proceeding on two tracks:
12 one known to the Churches, which was based ostensibly on good
13 faith cooperation between the churches and the IRS, and the
14 other which was covert and designed to undermine the progress
15 the Churches believed had been made towards the granting of
16 exempt status. The discovery of this conduct raised serious
17 concerns about whether the IRS was proceeding in good faith and
18 in accordance with the March 17, 1988 agreement. The Churches
19 immediately sought a meeting with the IRS to discuss their
20 concerns.

21 45. It was later revealed that defendant Lipkin of the
22 CID was instrumental in arranging the interview of the Aznarans
23 by the EO agents, thus demonstrating the continuing ties
24 between EO and CID. Plaintiff, RTC and CST were also not aware
25 at the time that the two senior LA EO agents in the
26 examination, defendants Young and Corsi, had met several times
27 with LA CID during the review, that defendant Lipkin had
28 briefed all of the agents involved in conducting the review,

1 and that defendants Corsi and Young had by this time received
2 and reviewed the Special Agent's Report. Thus, CID collusion
3 with LA EO did not end in 1985 when IRS District Counsel
4 rejected CID's request for prosecution, nor in 1986 when the
5 Justice Department refused to convene a grand jury.

6 46. During their interview of the Aznarans, defendants
7 Corsi, Young and Roth openly displayed their animus toward the
8 Church and the Scientology religion. The agents referred to
9 Church religious services as a "dog and pony show", and
10 referred to members of the Church as "crazy devotees".
11 Defendant Young actually encouraged the Aznarans to "take a
12 stand" against the Church. Defendant Roth compared the
13 Scientology religion to drug addiction. These actions violate
14 Internal Revenue Service policies which require an employee to
15 maintain "strict impartiality" between the taxpayer and the
16 government. These agents, who openly denigrated the
17 Scientology religion, should have been removed from any
18 examinations of Scientology churches under The Internal Revenue
19 Manual, Handbook of the Rules of Conduct which indicates that
20 an agent should be removed if his actions could lead others
21 reasonably to question the employee's impartiality. I.R.M.
22 0735.1, Handbook of Employee Responsibilities and Conduct
23 § 232.21, MT 0735.1-17 (November 26, 1986).

24 47. On June 22, 1988, plaintiff contacted IRS
25 representatives from the Los Angeles office and asked why the
26 the summonses had been issued to the Aznarans. The IRS refused
27 to discuss the interview or confirm that it had taken place.
28 Church counsel informed the IRS that the document review was

1 accordingly being suspended until the matter was resolved with
2 the National Office. On June 24, 1988, in response to a letter
3 from the Church regarding its concerns that the document review
4 was apparently being conducted in bad faith, defendant
5 Friedlander admitted that the IRS "owed [the churches] an
6 explanation."

7 48. In January of 1988, prior to the start of the on site
8 review, final adverse determinations were already drafted and
9 circulated by Friedlander and Darling. After June 27, 1988,
10 while the Churches were awaiting defendant Friedlander's
11 promised explanation, the IRS finalized the adverse
12 determination letters from the pre-existing drafts without
13 substantive amendment. On July 7, 1988, the IRS informed CST
14 that in its view the IRS had proceeded in accordance with the
15 March 17 agreement and that it viewed the suspension of the
16 audit as a termination of that agreement.

17 49. The following day, July 8, 1988, plaintiff and the
18 other Churches wrote the IRS reiterating that they had not
19 terminated the examination, but were waiting for the promised
20 explanation regarding the Aznaran interview. The letters stated
21 that the Churches did wish to fulfill the terms of the March 17,
22 1988 agreement, and that all they sought was a meeting with the
23 IRS to clarify matters before the examination procedure
24 resumed. That same day the IRS issued final adverse ruling
25 letters to all three churches denying tax-exempt status. These
26 letters were nearly identical to those drafted six months
27 earlier by Friedlander and Darling. Despite previous
28 assurances to the contrary, the denials of the applications of

1 plaintiff and RTC were based, in part, on alleged commercialism
2 in the sale of religious goods and services.

3 50. The IRS on-site review procedure was an utter sham,
4 designed not to make any good faith determination of the tax
5 exempt status of plaintiff, but merely to continue to
6 collect information which would not otherwise have been
7 provided to the IRS. The on-site reviews also included
8 examination of myriad ecclesiastical and confidential Church
9 scriptural materials and other materials concerning the
10 religious practices of the Churches which had no reasonable
11 relation to any tax exemption issue.

12 51. The defendants, and each of them, by their conduct
13 alleged herein, have singled out plaintiff because of its
14 position as Mother Church of the Scientology religion and,
15 through those acts, have invidiously discriminated against
16 plaintiff in their application of the laws of the United
17 States, in violation of the Establishment Clause of the First
18 Amendment to the United States Constitution.

19 52. The defendants, and each of them, by their conduct
20 alleged herein, have singled out plaintiff for invidious
21 discrimination in the application of the laws of the United
22 States on the basis of plaintiff's religious affiliation, in
23 violation of the Equal Protection component of the Due Process
24 Clause of the Fifth Amendment to the United States Constitution.

25 53. The conduct of the defendants, and each of them, has
26 been arbitrary and capricious, and has resulted in the
27 deprivation of plaintiff's property. Such conduct, motivated
28 by religiously rooted bias and prejudice, is a violation of the

1 Due Process Clause of the Fifth Amendment to the United States
2 Constitution.

3 54. Plaintiff has been damaged and continues to be
4 damaged thereby in an amount to be proven at trial. That
5 amount is not presently capable of precise calculation but
6 is believed to be in excess of \$20,792,850 which represents
7 direct expenditures by plaintiff. Plaintiff has also suffered
8 consequential and resulting damages in an amount to be proven
9 at trial, but which is in an amount in excess of \$100 million.

10 THIRD CLAIM FOR RELIEF

11 (For First and Fifth Amendment Violations by All Defendants)

12 55. The Church repeats and realleges each and every
13 averment set forth in paragraphs 1 through 54, inclusive.

14 56.. The IRS began additional harassive actions against
15 plaintiff and Scientology parishioners commencing in October,
16 1988, when the IRS issued letters to several Scientologist
17 taxpayers, who had claimed deductions on their tax returns for
18 money paid to their Scientology churches for religious
19 services, informing them that their cases were part of a
20 "designated tax shelter litigation project entitled
21 Scientology." Such a designation was blatantly improper and
22 demonstrated discriminatory bias and creation of a suspect
23 category of members of the Scientology religion.

24 57. Similarly, on February 14, 1989, the IRS office in
25 Laguna Niguel, California sent a letter to two Scientologists
26 concerning Church-related deductions, stating that no deduction
27 would be allowed as they had not shown that Scientology is
28 "other than a sham designed for the purpose of claiming

1 fictitious charitable contributions." This statement, too, was
2 blatantly false and the result of bias, since even the IRS has
3 repeatedly acknowledged that Scientology is a bona fide
4 religion and that Scientology churches are bona fide churches.
5 The IRS was forced to correct their files to delete these
6 references after the Scientologists who received this letter
7 prevailed in Smith v. Brady, No. CV 89-2584-RG(Bx) (C.D.
8 Cal. 1990). Indeed, the IRS acknowledged that such
9 designations were improper in a national office memorandum
10 issued in 1986, yet the IRS continued labelling Scientologists
11 as tax protestors as late as 1989.

12 58. Documents obtained in FOIA litigation reveal an
13 entire set of procedures set up for the purpose of targetting
14 the tax returns of individual Scientologists, monitoring and
15 coordinating the investigations of these individuals, and
16 falsely designating them as "tax protestors." These documents,
17 from the Los Angeles District, show that the returns of
18 Scientologists who claim deductions for their contributions to
19 the Church are designated with a special code for "Alleged
20 Contributions (incl. Scientology & Alleged Church)". This
21 code is part of the Tax Protestor Program described in the
22 Internal Revenue Manual, and allows the returns, which are
23 treated as "priority cases," to be "controlled" through the
24 IRS' nationwide computer system. A special questionnaire for
25 Scientology cases is included for use by IRS examiners. An
26 internal memo, designed to assist IRS examiners in handling
27 these cases, lists several organizations which have never even
28 existed, and claims that these are names used by the "Church of

1 Scientology."

2 59. Defendant Melvin Blough attempted to utilize the
3 Church audit procedures of 26 U.S.C. § 7611 to identify
4 thousands of parishioners of the Church of Scientology Flag
5 Service Organization ("CSFSO") for the purpose of selecting
6 their personal tax returns for audit. Blough testified that he
7 wished to obtain records from CSFSO which would: (a) identify all
8 of its parishioners for a three year period; (b) identify each
9 of the courses delivered by CSFSO and describe them; (c)
10 identify the courses taken by the parishioners; and (d) pull the
11 tax returns of a number of these individuals. Blough stated
12 that CSFSO provides courses to an estimated 8,000 parishioners a
13 year, and further claimed that the IRS would use as many agents
14 as needed to compile this information. In fact, nearly 100
15 parishioners of CSFSO have received audit notices regarding
16 their contributions to the Church since Blough announced his
17 plans. Blough also utilized the Cult Awareness Network ("CAN")
18 as a means to improperly gather information regarding the
19 Church. CAN is a modern day hate group, whose tactics include
20 kidnapping, brainwashing and beating of individuals found to be
21 guilty of holding "unacceptable" religious convictions.
22 Despite these activities, CAN was granted tax exempt status by
23 the IRS, and was used by Blough as an information gathering
24 arm, for the purpose of procuring information on individual
25 Scientologists and their businesses.

26 60. Assaults on churches of Scientology by or as a result
27 of actions by IRS personnel have not been limited to the
28 borders of the United States. William Connett is now stationed

1 as the IRS' foreign representative in France where he has a
2 wide range of influence in European countries. Since his
3 posting there have been raids on churches of Scientology by
4 police and taxing authorities and unwarranted arrests of
5 individual Scientologists in France, Italy and Spain. When two
6 staff members of the Church of Scientology in Brussels were
7 initially denied visas to travel to the United States, this was
8 traced directly back to false information provided to the
9 consulate officials by Connett.

10 61. In an effort to harass, discredit and smear
11 plaintiff, to intimidate IRS employees who might otherwise
12 treat plaintiff fairly or disclose IRS misconduct, and to
13 evade FOIA disclosure obligations, defendant Keith Alan Kuhn has
14 begun to proliferate unsubstantiated and patently false
15 allegations against Scientology and Scientologists, which have
16 been used as a pretext to manufacture security risks to IRS
17 employees. In or about May 1990, Kuhn sent out a memorandum to
18 each of the Regional Inspectors around the country, directing
19 them to contact specifically named EO employees who were
20 working on Scientology cases. Based on scurrilous and
21 unsubstantiated charges, Kuhn directed that these EO employees
22 be told that there was a potential for harassment against them
23 from the Church, thus creating a climate where plaintiff and
24 other Scientology churches could not possibly receive unbiased
25 treatment from any EO agent throughout the country. Kuhn's
26 allegations themselves are entirely without merit. The IRS
27 filed a declaration by Kuhn which contained these charges in a
28 FOIA case brought by a Scientology Church. The District Court

1 judge in that case ordered the declaration stricken from the
2 record, describing it as "scurrilous" and "unfounded".

3 62. After the collapse of the criminal investigation and
4 after denying section 501(c)(3) exemption to plaintiff, RTC
5 and CST, the nationwide examination of exempt and nonexempt
6 Scientology Churches and entities which had been planned early
7 in 1986 was resuscitated by defendants and the IRS. A
8 three-day meeting on Scientology was convened at the IRS
9 National Office on October 19, 20 and 21, 1988 to coordinate
10 nationwide actions against various Scientology Churches,
11 including plaintiff.

12 63. That three-day meeting was ordered by defendant
13 Brauer, organized and convened by defendant Owens, and chaired
14 by defendant Friedlander. Also in attendance were:

- 15 a. EO Operations employee Tom Miller, who had
- 16 drafted the 1986 proposal to re-examine the exempt
- 17 Scientology Churches;
- 18 b. Roderick Darling;
- 19 c. LA EO Branch Chief Mel Joseph, along with
- 20 defendants Young and Corsi;
- 21 d. Defendant Blough;
- 22 e. IRS agents from at least the Brooklyn,
- 23 Baltimore, and Los Angeles Regional
- 24 offices; and
- 25 f. IRS National Office representatives.

26 64. Various strategic plans for a continued IRS campaign
27 directed at Scientology were discussed at the three-day meeting
28 in October 1988. Defendant Young prepared and delivered a

1 briefing at that conference in which he proposed that and
2 explained how the IRS could use the assessment of tax
3 liabilities under the Federal Insurance Contribution Act
4 ("FICA") and the Federal Unemployment Tax Act ("FUTA") to
5 exploit the non-exempt status of various Scientology Churches,
6 completely disregarding the fact that the Churches in question,
7 including plaintiff, had filed waivers seeking exemption
8 from those employment taxes which had been accepted by the IRS.

9 65. At that same three-day meeting, format material for
10 a nationwide campaign of examinations of exempt and non-exempt
11 Scientology Churches was distributed and discussed, and the
12 decision was made during that meeting to commence tax inquiries
13 of plaintiff, Church of Scientology Western United States
14 ("CSWUS"), Church of Scientology Flag Service Organization
15 ("CSFSO"), Founding Church of Scientology of Washington, D.C.
16 ("FCDC") and Church of Scientology of Boston ("Boston Church").
17 Those inquiries in fact did commence, upon the issuance of
18 notices of tax inquiry to those Churches which were circulated
19 during that three-day meeting.

20 66. Upon receipt of the virtually identical notices of
21 tax inquiry, plaintiff, CSWUS, CSFSO, FCDC, and the Boston
22 Church responded by pointing out inaccuracies and deficiencies
23 in the standardized, coordinated notices and, despite those
24 infirmities, responded to the questions posed by those notices.
25 In each instance, however, the IRS issued a notice of church
26 examination under the Church Audit Procedures Act, 26 U.S.C.
27 § 7611. In four of those, summonses were issued and summons
28 enforcement proceedings commenced in the appropriate district

1 court. In the CSFSO case, the matter is still pending in the
2 United States District Court for Middle District of Florida;
3 this Court, the Honorable Harry L. Hupp, presiding, quashed
4 the majority of both the summonses issued to CSWUS and
5 plaintiff; the United States District Court for the District of
6 Massachusetts quashed the 'summons to the Boston Church
7 outright. The FCDC examination was conducted, and despite
8 nearly two years of intrusive inquiry, the IRS declined to
9 cancel FCDC's exemption.

10 67. The coordinated examinations of those five distinct
11 churches were coupled with concurrently timed IRS activities
12 directed against other Scientology Churches and individual
13 Scientologists. These various coordinated activities against
14 Scientology are the responsibility of what defendant Owens has
15 described as "thousands of [IRS] employees in key districts and
16 district offices around the country and the National Office."
17 Those coordinated actions have also been the subject of later
18 meetings on Scientology at the IRS National Office, involving
19 as many as 40 attendees from different IRS regions and
20 divisions, in pursuit of what the SAR termed the "final halt
21 to" and "ultimate disintegration of" Scientology.

22 68. Such coordination of IRS offenses against Scientology
23 Churches and Scientologists generally also reaches down to the
24 LA District level. Since approximately July 1989, monthly
25 meetings have been held at the Pasadena, California courthouse
26 that houses the United States Court of Appeals for the Ninth
27 Circuit, to coordinate the actions of the Los Angeles EO
28 (represented at such meetings by defendant Young), Examinations

1 Division, and upon information and belief, LA CID. These
2 monthly meetings are arranged and coordinated by the Los
3 Angeles District Counsel's office, and are attended by a number
4 of District Counsel staff and, in fact, are chaired by
5 defendant Jeglikowski, who supervises the meetings and the
6 matters coordinated therein, against plaintiff and other
7 Scientology Churches in disregard of the Constitution, the
8 Internal Revenue Code, and policies set forth in the Internal
9 Revenue Code. A regular topic of these meetings has been civil
10 lawsuits involving plaintiff and other Scientology churches.
11 The cases specifically include the civil suit filed by the
12 Aznarans, and a case involving a former attorney for the
13 Church. Defendant Jeglikowski has met with an attorney for one
14 of the civil litigants, for purposes of coordinating actions
15 between the IRS and the civil litigants against plaintiff.

16 69. The monthly meetings in Pasadena, like the meetings
17 held from time to time at the National Office, are the vehicles
18 by which defendants have singled out a religion and its
19 churches and parishioners for singular and unfair treatment
20 based upon their religious affiliation and set about to
21 administer the Internal Revenue Code in a manner designed
22 specifically to affect such co-religionists in an arbitrary and
23 capricious manner, and to cause the harm hereinafter averred.

24 70. Plaintiff has made repeated efforts to resolve any
25 legitimate concerns on the part of the IRS. As shown above,
26 the Church has provided voluminous information to the IRS over
27 the years to allay any concerns and to respond to any
28 legitimate questions. These efforts on the part of the Church

1 have been either been perverted (as in the use of this
2 information for purposes of a CID investigation), or rebuffed.
3 Within the past few months, plaintiff once again attempted to
4 resolve various issues with EP/EO representatives, including
5 defendant Owens. However, the IRS continuously demanded the
6 production of voluminous quantities of documents as a
7 precondition for further talks. Most of the information
8 requested had previously been provided to the IRS over the past
9 years, yet the EP/EO representatives demanded it once again.
10 When informed that the production of documents being requested
11 on a voluntary basis was so extensive as to require months if
12 not years to review, one representative of EP/EO remarked that
13 this did not concern him, as he had twelve years left in the
14 IRS before retirement.

15 71. The defendants, and each of them, by their conduct
16 alleged herein, have singled out plaintiff for invidious
17 discrimination in the application of the laws of the United
18 States on the basis of plaintiff's religious affiliation, in
19 violation of the Equal Protection component of the Due Process
20 Clause of the Fifth Amendment to the United States Constitution.

21 72. Plaintiff has been damaged and continues to be
22 damaged thereby in an amount to be proven at trial. That
23 amount is not presently capable of precise calculation but
24 is believed to be in excess of \$20,792,850 which represents
25 direct expenditures by plaintiff. Plaintiff has also suffered
26 consequential and resulting damages in an amount to be proven
27 at trial, but which is in an amount in excess of \$100 million.

28 73. The conduct alleged herein is ongoing and, unless

1 enjoined by this Court through an order forbidding defendants
2 from any and all further participation in any matter involving
3 the IRS and plaintiff or any other Scientology Churches or any
4 other Scientology entities or parishioners, the harm alleged
5 herein will continue and the Constitutional violations will
6 persist to plaintiff's detriment.

7 FOURTH CLAIM FOR RELIEF

8 (For Fifth Amendment Violations by All Defendants)

9 74. The Church repeats and realleges each and every
10 averment set forth in paragraphs 1 through 73, inclusive.

11 75. Defendants have, in the course of conduct hereinabove
12 averred, acted in violation of the Constitution, the laws of
13 the United States, and the policies, and procedures, and
14 practices of the IRS created by the IRS for the benefit of
15 taxpayers. Such conduct is a denial of plaintiff's due process
16 rights as set forth in the Fifth Amendment to the United States
17 Constitution.

18 76. Plaintiff has been damaged and continues to be
19 damaged thereby in an amount to be proven at trial. That
20 amount is not presently capable of precise calculation but
21 is believed to be in excess of \$20,792,850 which represents
22 direct expenditures by plaintiff. Plaintiff has also suffered
23 consequential and resulting damages in an amount to be proven
24 at trial, but which is in an amount in excess of \$100 million.

25 77. The conduct alleged herein is ongoing and, unless
26 enjoined by this Court through an order forbidding defendants
27 from any and all further participation in any matter involving
28 the IRS and plaintiff or any other Scientology churches or any

1 other Scientology entities or parishioners, the harm alleged
2 herein will continue and the Constitutional violations will
3 persist to plaintiff's detriment.

4 WHEREFORE, plaintiff Church of Scientology International
5 prays that:

6 78. Defendants, and each of them, be preliminarily and
7 permanently enjoined from any and all further participation in
8 and responsibility for any matter involving the IRS and
9 plaintiff or any other Scientology Church or entity, or any
10 Scientology parishioner;

11 79. Plaintiff be awarded damages according to proof,
12 which are believed to be in excess of \$20,792,850 in
13 direct expenditures by plaintiff, and consequential and
14 resulting damages in an amount to be proven at trial, but which
15 is in an amount in excess of \$100 million, and

16 80. The Court award and order such other and further
17 relief that it deems appropriate under these circumstances.

18 Dated: August 12, 1991

Respectfully submitted,

19 QUINN, KULLY AND MORROW

20 COOLEY, MANION, MOORE &
JONES, P.C.

21 BERRY & CAHALAN

22 BOWLES & MOXON

23 WILLIAM T. DRESCHER

24
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26 William T. Drescher

27 Attorneys for Plaintiff
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EXHIBIT EE

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and) CASE No. CV 88-1786 JMI(Ex)
RICHARD N. AZNARAN,)
Plaintiffs,) SUPPLEMENTAL MEMORANDUM IN SUPPORT
v.) OF DEFENDANTS' MOTION TO DISMISS
CHURCH OF SCIENTOLOGY OF) COMPLAINT WITH PREJUDICE;
CALIFORNIA, et al.,) DECLARATIONS OF SAM BROWN, THORN
Defendants.) SMITH, EDWARD AUSTIN, LYNN R.
AND RELATED COUNTERCLAIMS.) FARNY AND LAURIE J. BARTILSON
DATE: To be determined
TIME: To be determined
COURTROOM: Hon. James M. Ideman

001349

When the Court entered its Order of July 22, 1991,
vacating the appearance of Joseph A. Yanny ("Yanny") as
counsel for plaintiffs because that appearance was
"inappropriate and highly prejudicial to Defendants," and
reinstating Ford Greene ("Greene") as plaintiffs' counsel, the
Court undoubtedly intended that Yanny's participation in this
case would cease. Defendants predicted that mere
disqualification of Yanny would not cure the deep-rooted
problem, and accordingly filed their Motion to Dismiss the
Complaint. It has now come to defendants' attention that
Yanny's involvement in this case has in fact survived
that Order, and that Yanny has returned to his covert
representation of the Aznarans, similar to the arrangement that
existed prior to his direct entry into the case. As a result
of this information, defendants are forced to supplement their
motion to dismiss the complaint with prejudice, to bring to the
Court's attention Yanny's continuing participation in this
matter as additional grounds warranting dismissal.

There are two manifestations of Yanny's ongoing aid
to the Aznarans that are known to defendants. At this time,
they can only speculate as to what other involvement exists.
The assistance furnished by Yanny has taken the visible form of
supplying Greene with help from two of Yanny's present or
former employees.

The first of these employees, John Koresko, was formerly
the office manager, and later a paralegal for Yanny's law firm,
during the pendency of this litigation, Yanny's own litigation
with defendants herein and during the time that Yanny was

1 counsel to these defendants. (Ex. A, Deposition of John
2 Koresko, at 65-67.) Yet, as more fully detailed in the
3 declarations of Edward Austin, Thorn Smith and Lynn R. Farny,
4 subsequent to Yanny's disqualification from representing the
5 Aznarans, Koresko was seen at Greene's office on August 3 and
6 4. On August 3, Koresko arrived at Greene's office at 5:14
7 p.m. and was not observed leaving.^{1/}

8 The extensive involvement of Yanny's other employee
9 in this case following Yanny's disqualification also
10 recently came to the attention of defendants. On August
11 19, 1991, by order of the Court extending their time to
12 respond, plaintiffs had oppositions to six motions due. (Order
13 of August 9, 1991.) On that date, Greene filed three papers
14 with the Court, oppositions to two summary judgment motions and
15 a 53-page "Appendix." During the time period in which those
16 papers were being prepared, an individual named Gerald
17 Armstrong ("Armstrong") was observed at Greene's office
18 each day from August 15 through 19 for most of each of those
19 days. (Ex. D, Declaration of Sam Brown; Ex. E,
20 Declaration of Lynn R. Farny.) In addition, when Laurie
21 Bartilson, counsel for defendant Church of Scientology
22 International, called Greene's office on August 19 to arrange

23 1. While plaintiffs may try to pass off Koresko's presence as
24 a simple matter of returning the case files, this is belied by
25 the sworn testimony of their varying counsel. Yanny claimed on
26 July 31, 1991, that he had never received the file from Greene.
27 (Ex. B) On August 1, 1991, Greene swore that he had sent the
28 file to Los Angeles by Federal Express on June 27, 1991. (Ex.
C, Declaration of Ford Greene, para. 11.) He claimed that he
then received the case file from his new co-counsel, Mr.
Elstead - not Yanny - on July 31, 1991, three days before
Koresko's appearance at Greene's offices.

1 to have a courier pick up the oppositions, the telephone was
2 answered by a person who identified himself as Gerald Armstrong
3 ("Armstrong"). (Ex. F, Declaration of Laurie J. Bartilson,
4 para. 3.) When queried as to his presence there, Armstrong
5 stated that he was "helping out." (Id.) Additional papers
6 were late-filed with the Court by Greene on August 23, and not
7 surprisingly, Armstrong's presence at Greene's office continued
8 after the August 19 filings for several more days. (Ex. D,
9 Declaration of Sam Brown, para. 3.)

10 Armstrong has recently been identified as a paralegal
11 hired by Yanny to work with him on this case. Yanny
12 represented in argument to Los Angeles Superior Court that he
13 had "hired Armstrong as a paralegal to help [him] on the
14 Aznaran case." (Ex. G, Reporter's Transcript of August 6,
15 1991, at 25.) Armstrong confirmed this characterization, as did
16 Yanny in a declaration. (Ex. B, Declaration of Joseph A.
17 Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald
18 Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's
19 paralegal on this case, his new affiliation as an assistant to
20 Ford Greene is truly outrageous. Not only has Yanny been
21 disqualified point blank by the Court from representing the
22 Aznarans, he has also been forbidden from directly or
23 indirectly acting as counsel against defendants on behalf of
24 the Aznarans or Gerald Armstrong by preliminary injunction
25 entered on August 6 at the hearing in which the statement was
26 proffered that Armstrong was his paralegal on this case.
27 Religious Technology Center, et al. v. Yanny, et al.,
28 Case No. BC 033035. (Ex. G, Transcript of August 6, 1991, at

1 3-4.)

2 This Court disqualified attorney Barry Van Sickle from
3 representing plaintiffs as being "an extension of Joseph
4 Yanny's continuing involvement in the instant action." (slip.
5 op. September 6, 1988). Here again, Yanny's involvement in
6 this case continues, this time through a different "extension"
7 -- the improper activities of Yanny's paralegal, Gerald
8 Armstrong, whose actions are just as improper as they would be
9 if done by a lawyer. In re Complex Asbestos Litigation 91
10 D.A.R. 8849 (1991).

11 That Armstrong is amenable to the kind of covert
12 representation in which Yanny is engaging in this case is
13 highlighted by his recorded remarks made in November 1984. At
14 that time, Armstrong was plotting against the Scientology
15 Churches and seeking out staff members in the Church who would
16 be willing to assist him in overthrowing Church leadership. The
17 Church obtained information about Armstrong's plans and,
18 through a police-sanctioned investigation, provided Armstrong
19 with the "defectors" he sought. On November 30, 1984, Armstrong
20 met with one Michael Rinder, an individual whom Armstrong
21 thought to be one of his "agents" (but who in reality was loyal
22 to the Church). In the conversation, recorded with written
23 permission from law enforcement, Armstrong stated the following
24 in response to questions by Mr. Rinder as to whether they had
25 to have actual evidence of wrongdoing to make allegations
26 in Court against the Church leadership:

27 ARMSTRONG: They can allege it. They can allege
28 it. They don't even have -- they can allege it.

1 RINDER: So they don't even have to -- like -- they
2 don't have to have the document sitting in front
3 of them and then --

4 ARMSTRONG: Fucking say the organization destroys
5 the documents.

6 * * *

7 Where are the -- we don't have to prove a goddamn
8 thing. We don't have to prove shit; we just have
9 to allege it.

10 (Ex. E, Declaration of Lynn R. Farny, para. 6.) With such
11 a criminal attitude, Armstrong fits perfectly into Yanny's game
12 plan for the Aznaran case.

13 It is apparent that Yanny's disqualification from this
14 case has simply driven him back underground. He challenged the
15 Court by appearing directly in this case and lost. So he now
16 sends his paralegals to aid Greene in his prosecution of the
17 case, thereby doing indirectly what this Court and the Los
18 Angeles Superior Court have forbidden him to do at all. Greene
19 and the Aznarans are obviously aware that the Court
20 disqualified Yanny and ruled his participation in this case to
21 be "highly prejudicial to Defendants" because of Yanny's former
22 representation of defendants. This was the same order which
23 removed Yanny and put Greene back into the case as plaintiffs'
24 counsel. Thus, the Aznarans, their former attorney and their
25 present attorney are equally culpable for permitting Yanny to
26 continue his participation in this case to the adjudicated

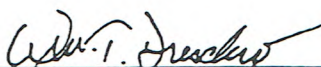
27 ///

28 ///

1 prejudice of defendants. Only the remedy of dismissal can
2 possibly disable their collusion in violation of defendants'
3 rights permanently.

4 Dated: August 26, 1991

Respectfully submitted,

5
6 
7 WILLIAM T. DRESCHER

8 Earle C. Cooley
9 COOLEY, MANION, MOORE
10 & JONES, P.C.

11 Attorneys for Defendants
12 CHURCH OF SPIRITUAL TECHNOLOGY
13 and RELIGIOUS TECHNOLOGY CENTER

14 Eric Lieberman
15 RABINOWITZ, BOUDIN, STANDARD,
16 KRINSKY & LIEBERMAN, P.C.

17 John J. Quinn
18 QUINN, KULLY & MORROW

19 Laurie J. Bartilson
20 BOWLES & MOXON

21 Attorneys for Defendant
22 CHURCH OF SCIENTOLOGY
23 INTERNATIONAL

24 Michael Lee Hertzberg

25 James H. Berry, Jr.
26 BERRY & CAHALAN

27 Attorneys for Defendant
28 AUTHOR SERVICES, INC.

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DECLARATION OF LYNN R. FARNY

I, Lynn R. Farny, do declare:

1. I am over 18 years of age and make this declaration of my own personal knowledge and for those matters stated upon information and belief, I believe them to be true and accurate. If called as a witness to testify as to the matters herein, I could and would do so competently.

2. I am corporate Secretary of the Church of Scientology International ("CSI"), a California religious corporation.

3. I have reviewed the photographs which are attached to the declarations of Sam Brown and Thorn Smith, Exhibits D and I to the Supplemental Memorandum in Support of Motion to Dismiss the Complaint. I recognize the individual in the photographs attached to the Smith declaration as John Koresko and the individual in the photographs attached to the Brown declaration as Gerald Armstrong.

4. I am well familiar with Gerald Armstrong, as I have worked in the legal department of CSI since 1984, and prior to that in the legal department of Church of Scientology of California ("CSC"). I have actively followed the events occurring during that time in lawsuit against Gerald Armstrong by CSC regarding his theft of private documents belonging to the Founder of the Scientology religion.

5. I am also well familiar with John Koresko, who was office manager and later a paralegal for Joseph A. Yanny, CSI's former attorney, during the time that Yanny represented

///

///

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1 CSI and afterwards, when CSI and CSC sued Yanny for his
2 breaches of fiduciary duties.

3 6. That Armstrong is amenable to the kind of covert
4 representation in which Yanny is engaging in this case is
5 highlighted by his recorded remarks made in November 1984. At
6 that time, Armstrong was plotting against the Scientology
7 Churches and seeking out staff members in the Church who would
8 be willing to assist him in overthrowing Church leadership. The
9 Church obtained information about Armstrong's plans and,
10 through a police-sanctioned investigation, provided Armstrong
11 with the "defectors" he sought. On November 30, 1984, Armstrong
12 met with one Michael Rinder, an individual whom Armstrong
13 thought to be one of his "agents" (but who in reality was loyal
14 to the Church). In the conversation, recorded with written
15 permission from law enforcement, Armstrong stated the following
16 in response to questions by Mr. Rinder as to whether they had
17 to have actual evidence of wrongdoing to make allegations
18 against the Church leadership:

19 ARMSTRONG: They can allege it. They can allege
20 it. They don't even have -- they can allege it.

21 RINDER: So they don't even have to -- like -- they
22 don't have to have the document sitting in front
23 of them and then --

24 ARMSTRONG: Fucking say the organization destroys
25 the documents.

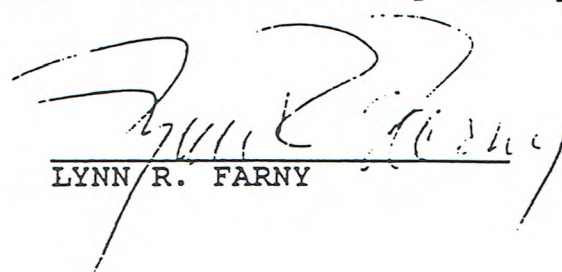
26 * * *

27 Where are the -- we don't have to prove a goddamn
28 thing. We don't have to prove shit; we just have

1 to allege it.

2 I declare under penalty of perjury under the laws of the
3 State of California that the foregoing is true and correct.

4 Executed in Los Angeles, California the 26th day of August
5 1991.

6 
7 LYNN R. FARNY
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

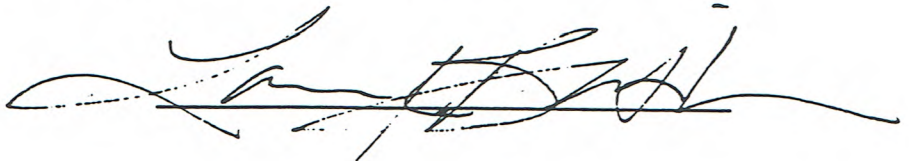
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 26, 1991, I caused to be served the foregoing document described as SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; DECLARATIONS OF SAM BROWN, THORN SMITH, EDWARD AUSTIN, LYNN R. FARNY AND LAURIE J. BARTILSON on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

.. If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.

A handwritten signature in dark ink, appearing to read 'Ford Greene', written over a horizontal line.

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HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Defendant
GERALD ARMSTRONG

FILED

MAR 16 1992

HOWARD HANSON
MARIN COUNTY CLERK
by P. Fan, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

RECEIVED

MAR 16 1992

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

No. 152 229

HUB LAW OFFICES

EVIDENCE IN SUPPORT OF
DEFENDANT'S OPPOSITION
TO SCIENTOLOGY'S MOTION FOR
PRELIMINARY INJUNCTION

Date: March 20, 1992

Time: 9:00 a.m.

Dept: Four (4)

Trial/Arbitration: None Set

VOLUME II

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COPY

1 TOBY L. PLEVIN
2 ATTORNEY AT LAW
3 10700 SANTA MONICA BLVD, SUITE 4-300
4 LOS ANGELES, CALIFORNIA 90025
5 (213) 788-8660

6 Attorney for Defendant/Cross-Complainant
7 GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR AND IN THE COUNTY OF LOS ANGELES

10 CHURCH OF SCIENTOLOGY OF
11 CALIFORNIA, a California
12 Corporation,

13 Plaintiff,

14 vs.

15 GERALD ARMSTRONG; et al.,

16 Defendants.

No. C 420 153

DEFENDANT AND CROSS-
COMPLAINANTS' OPPOSITION
NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT AGREEMENT; FOR
LIQUIDATED DAMAGES AND TO
ENJOIN FUTURE VIOLATIONS

17 GERALD ARMSTRONG,

18 Cross-Complainant,

19 vs.

20 CHURCH OF SCIENTOLOGY OF
21 CALIFORNIA, a California
22 Corporation, et al.,

23 Cross-Defendants.

[FILED UNDER SEAL]

Date: December 3, 1991
Time: 9:00 a.m.
Dept: 56

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1 **I. INTRODUCTION**

2 Cross-Defendants Church of Scientology of California, Church
3 of Scientology International and Religious Technology Center
4 (hereinafter collectively referred to as "Scientology") request
5 this Court to enforce particular provisions of a certain
6 settlement agreement against Gerald Armstrong ("Armstrong"). This
7 request must be denied because on multiple occasions Scientology
8 has violated the very terms and conditions which it would have
9 this Court enforce and impose upon Armstrong. Moreover, for the
10 Court to enforce and impose such terms would violate the keymost
11 function of the judiciary - to serve as a forum for the
12 ascertainment of truth - because such terms are for the purpose of
the suppression of discreditable facts and thus constitute an
obstruction of justice which interferes the administration of the
Court's own processes.

12 **II. STATEMENT OF FACTS**

13 On December 6, 1986, Scientology and Armstrong entered into a
14 "Mutual Release of All Claims and Settlement Agreement"
15 ("agreement"). Cross-defendants' Ex. A. The agreement applied to
16 Armstrong vs Church of Scientology of California, LASC No. 420153
17 whereby Armstrong released his claims against all Scientology-
18 affiliated organizations, Id., ¶ 1, and received an unspecified
19 sum of money paid to attorney Michael J. Flynn for the settlement
20 of the claims of all Flynn's clients against Scientology in a
21 "block settlement," Id., ¶ 3. Moreover, "[f]or and in
22 consideration of the above described consideration, the mutual
23 covenants, conditions and release contained herein" Id. ¶ 4,
24 Armstrong agreed to file a dismissal of his case against
25 Scientology with the understanding that the release and the terms
thereof did not apply to Scientology's appeal of its underlying
case against Armstrong that was in the Court of Appeal, Id. ¶
4.A, concerning which Armstrong agreed not to in any way contest.
Id. ¶ 4.b. ^{1/}

27 ¹ On March 9, 1990, the Second District Court of Appeal
28 excused Armstrong from compliance with this particular provision.
Pursuant to Evidence Code § 452, this Court is requested to take
judicial notice of Armstrong's motions in the Court of Appeal and
of the appellate court's Order filed March 9, 1990. Exhibit N.

1 "For and in consideration of the mutual covenants, conditions
2 and release contained herein" Scientology generally released
3 Armstrong from all liability for acts up to the date of
4 agreement's execution. Id., ¶ 5. All parties waived their rights
5 pursuant to Civil Code § 1542, Id., ¶ 6, and "[f]urther, the
6 undersigned [there]by agree[d]" Id., ¶ 7, that liability for all
7 claims was expressly denied, Id., ¶ 7.A, that "Plaintiff" agreed
8 to assume liability for any attorney fee, and liens and would hold
9 Scientology harmless therefor, Id., ¶ 7.C. "Plaintiff" also
10 agreed to maintain strict confidentiality and silence with respect
11 to his experiences with, knowledge of and information concerning
12 Scientology and that if he breached the terms of this provision,
13 Scientology would be entitled to \$50,000 liquidated damages for
14 each breach. Id., ¶ 7.D. "Plaintiff" agreed to return to
15 Scientology any Scientology-related materials that he controlled
16 and to assist Scientology to recover such documents including
17 those in United States v. Zolin. ^{2/} Id., ¶ 7.E.

15 ² Armstrong v. Church of Scientology of California was
16 also the subject of the Supreme Court in United States v. Zolin
17 (1989) 109 S.Ct. 2619 in which the Court addressed whether the
18 attorney-client privilege between Scientology and some of its
19 attorneys should be abrogated on the basis "that the legal service
20 was sought or obtained in order to enable or aid the client to
21 commit or plan to commit a crime or tort." Id. at 2630. In Zolin,
22 the Supreme Court reversed the Ninth Circuit's ruling in United
23 States v. Zolin (9th Cir. 1987) 809 F.2d 1411 that the Government
24 had not made a sufficient showing that there had been "illegal
25 advice . . . given by [Scientology] attorneys to [Scientology]
26 officials" to invoke the crime-fraud exception to the attorney-
27 client privilege. Upon reversing and remanding, the Supreme Court
28 ordered the Ninth Circuit to review partial transcripts of the
tape recording sought by the IRS in an criminal investigation of
Scientology to determine whether the crime-fraud exception to the
privilege applied. On remand, the Ninth Circuit held:

24 "The partial transcripts demonstrate that the purpose of the
25 [Mission Corporate Category Sort Out] project was to cover up past
26 criminal wrongdoing. The MCCS project involved the discussion and
27 planning for future frauds against the IRS, in violation of 18
28 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on
the tapes that they are attempting to confuse and defraud the U.S.
Government. The purpose of the crime-fraud exception is to exclude
such transactions from the protection of the attorney-client
privilege." United States v. Zolin (6/20/90) 90 Daily Journal
D.A.R. 6890.

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1 "Plaintiff" agreed that he would "not voluntarily assist or
2 cooperate with any person adverse to Scientology in any proceeding
3 against any of the Scientology organizations" Id., ¶ 7.G.
4 "Plaintiff" also agreed "not to testify or otherwise participate
5 in any other . . . proceeding adverse to Scientology . . . unless
6 compelled to do so by lawful subpoena or other lawful process.
7 Plaintiff shall not make himself amenable to service of any such
8 subpoena in a manner which invalidates the intent of this
9 provision. Unless required to do so by such subpoena, Plaintiff
10 agrees not to discuss this litigation or his experiences with or
11 knowledge of the Church with anyone other than members of his
12 immediate family." Id., ¶ 7.H. Finally, "Plaintiff" agreed that
13 he would "not assist or advise anyone . . . contemplating any
14 claim or engaged in litigation or involved in or contemplating any
15 activity adverse to the interests of" Scientology. Id., ¶ 10.
16 "The parties" agreed "to forebear and refrain from doing any act
17 or exercising any right, whether existing now or in the future,
18 which act or exercise is inconsistent with this Agreement." Id.,
19 ¶ 18.E.

20 In 1987, less than one year after the agreement was signed,
21 Scientology distributed a "dead agent" pack attacking Armstrong.
22 ["Armstrong's description of the RPF in Corydon's book can also be
23 viewed in light of Armstrong's numerous false claims and lies on
24 other subject matters."] Exhibit A.

25 On October 5, 1987, Scientology representative Kenneth Long
26 violated the agreement by executing four affidavits in Church of
27 Scientology of California v. Miller, High Court of Justice,
28 Chancery Division, No. 1987 C. No. 6140, wherein Long solely
discussed matters which pertained to his characterizations of
Armstrong's activities that had been at issue in the settled
litigation. His "first affidavit" was 18 pages long, Exhibit B,
his "second affidavit" was 21 pages long, Exhibit C, and "third
affidavit" was 4 pages long. Exhibit D. Long's third affidavit
specifically stated:

Gerald Armstrong has been an admitted agent provocateur
of the U.S. Federal Government who planned to plant
forged documents in [Scientology's] files which would
then be "found" by Federal officials in subsequent
investigation as evidence of criminal activity.

1 Id., ¶ 8. Long's "fourth affidavit" accused Armstrong of
2 violating the Court's sealing orders. Exhibit F, ¶ 16.

3 On or about November 1, 1989, in the case entitled Corydon v.
4 Church of Scientology International, Inc., et al., LASC No.
5 C694401, Scientology attorney Lawrence E. Heller filed a Notice of
6 Motion and Motion of Defendant Author Services, Inc. to Delay or
7 Prevent the Taking of Certain Third Party Depositions by
8 Plaintiff; Memorandum of Points and Authorities; Declarations of
9 Lawrence E. Heller and Howard Schomer in Support Thereof. Exhibit
10 M. In his memorandum, Heller discussed the "block settlement" of
11 which the Armstrong agreement was a part. He stated:

12 One of the key ingredients to completing these
13 settlements, insisted upon by all parties involved, was
14 strict confidentiality respecting: (1) the Scientology ...
15 staff member's experiences with ... Scientology; (2) any
16 knowledge possessed by the Scientology entities concerning
17 those staff members ...; and (3) the terms and conditions
18 of the settlements themselves. Peace has reigned since the
19 time the interested parties entered into the settlements, all
20 parties having exercised good faith in carrying out the terms
21 of the settlement, including the obligations of
22 confidentiality. [Original emphasis.]

23 Id., at 4:9-19. In his sworn declaration, attorney Heller
24 testified:

25 I was personally involved in the settlements which are
26 referred to in these moving papers which transpired some two
27 and one-half years ago. Those settlements concerned well
28 over a dozen plaintiff litigants as well as various Church of
Scientology entities . . . Settlement negotiations, which
were not supervised by any court, were arduous and, as is
often the case in these instances, sometimes contentious.
However, a "universal settlement" was ultimately entered into
between the numerous parties. The universal settlement
provided for non-disclosure of all facts underlying the
litigation as well as non-disclosure of the terms of the
settlements themselves. The non-disclosure obligations were
a key part of the settlement agreements insisted upon by all
parties involved. [Original emphasis.]

29 Id. at 8:15-9:7.

30 On August 12, 1991, Scientology filed a complaint styled
31 Church of Scientology International v. Xanthos, et al., in United
32 States District Court, Central District of California, No. 91-
33 4301-SVW(Tx). Exhibit I. Therein, Scientology stated:

34 The infiltration of [Scientology] was planned as an
35 undercover operation by the LA CID along with former
36 [Scientology] member Gerald Armstrong, who planned to seed
37 [Scientology] files with forged documents which the IRS could

1 then seize in a raid. The CID actually planned to assist
2 Armstrong in taking over the [Scientology] hierarchy which
3 would then turn over all [Scientology] documents to the IRS
4 for their investigation.

5 Id. at 143-10.

6 On or about August 26, 1991, Scientology filed its
7 Supplemental Memorandum in Support of Defendants' Motion to
8 Dismiss Complaint with Prejudice in Aznaran v. Church of
9 Scientology of California, et al. United States District Court,
10 Central District of California, No. CV-88-1786-JMI(Ex). Exhibit
11 K. Therein Scientology attorney William T. Drescher stated that
12 in 1984 Armstrong was

13 plotting against ... Scientology ... and seeking out staff
14 members who would be willing to assist him in overthrowing
15 [Scientology] leadership. [Scientology] obtained information
16 about Armstrong's plans and, through a police-sanctioned
17 investigation, provided Armstrong with the "defectors" he
18 sought. On November 30, 1984, Armstrong met with one Michael
19 Rinder, an individual whom Armstrong thought to be one of his
20 "agents" (but who in reality was loyal to [Scientology]). In
21 the conversation, recorded with written permission from law
22 enforcement, Armstrong stated the following in response to
23 questions by Mr. Rinder as to whether they had to have actual
24 evidence of wrongdoing to make allegations in Court against
25 [Scientology's] leadership:

26 ARMSTRONG: They can allege it. They can allege it. They
27 don't even have -- they can allege it.

28 RINDER: So they don't even have to -- like -- they don't have
to have the documents sitting in front of them and then --

ARMSTRONG: Fucking say the organization destroys documents.
... Where are the -- we don't have to prove a goddamn
thing. We don't have to prove shit; we just have to allege
it.

(Ex. E, Declaration of Lynn R. Farney, para. 6.) With such a
criminal attitude, Armstrong fits perfectly into Yanny's game
plan for the Aznaran case.

Id. at 5:11-6:12.

III. SCIENTOLOGY'S OWN BREACHES OF THE AGREEMENT
HAVE EXCUSED ANY COUNTER-PERFORMANCE THEREOF BY ARMSTRONG

A. Reciprocal Covenants Between Scientology
And Armstrong To Maintain Confidentiality
Are Implied By The Agreement

The principles concerning the interpretation of contracts are
well settled. Paramount among these rules are the following:

[T]he contract must be construed as a whole and the intention
of the parties must be ascertained from the consideration of

1 the entire contract, not some isolated portion [citations];
2 a contract entered into for the mutual benefit of the parties
3 is to be interpreted so as to give effect to the main purpose
4 of the contract and not to defeat the mutual objectives of
5 the parties [citations]; language which is inconsistent with
6 the objective of the contract shall be rejected [citations].
7 Also, where a contract is susceptible of two interpretations,
8 the courts shall give it such a construction as will make it
9 lawful, operative, definite, reasonable and capable of being
10 carried into effect if it can be done without violating the
11 intention of the parties [citations]. And last, but not
12 least, the court shall avoid an interpretation which will
13 make a contract extraordinary, harsh, unjust, inequitable or
14 which would result in absurdity [citations].

15 County of Marin v. Assessment App. Bd., Marin City (1976) 64
16 Cal.App.3d 316, 325.

17 That which is necessarily implied in the language of a
18 contract is as much a part of it as that which is expressed. Wal-
19 Noon Corp. v. Hill (1975) 45 Cal.App.3d 605, 611-12. A contract
20 includes not only what is expressly stated, but also what is
21 necessarily implied from the language used. Mercer v. Lemmens
22 (1964) 230 Cal.App.2d 167, 171. Where express covenants fail to
23 cover phrases necessary to make workable and meaningful the
24 covenants expressed, implied covenants may be resorted to. Foley
25 v. U.S. Paving Co. (1968) 262 Cal.App.2d 499, 505-06.
26 Stipulations which are necessary to make a contract reasonable are
27 implied in respect to matters as to which the contract manifests
28 no contrary intention. Straus v. North Hollywood Hospital (1957)
150 Cal.App.2d 306, 309 P.2d 541, 545. A fair and reasonable
interpretation of a contractual provision, rather than one leading
to harsh, unreasonable or inequitable results, is always
preferred. Ibid. When the law implies a promise from the terms
of a written contract, the promise is as much a part of the
contract as if it were written out. Amen v. Merced County Title
Co. (1962) 58 Cal.2d 528, 532. Unexpressed provisions of a
contract may be inferred from the writing or from external facts.
California Lettuce Growers v. Union Sugar Co. (1955) 45 Cal.2d
474, 289 P.2d 785, 790. The rules controlling the exercise of
judicial authority to insert implied covenants require several
concurrent conditions: (1) the implication must arise from the
language used or it must be indispensable to effectuate the

1 intention of the parties; ^{3/} (2) it must appear from the
2 language used that it was so clearly within the contemplation of
3 the parties that they deemed it unnecessary to express it;
4 (3) implied covenants can only be justified on the grounds of
5 legal necessity; (4) a promise can be implied only where it may
6 be rightfully assumed that it would have been made if attention
7 had been called to it; and (5) there can be no implied covenant
8 where the subject is completely covered by the contract. Adkins
9 v. Lear, Inc. (1968) 67 Cal.2d 882, 905; Addiego v. Hill (1965)
10 238 Cal.App.2d 842, 847; Walnut Creek Pipe Distrib. v. Gates
11 Rubber Co. (1964) 228 Cal.App.2d 810, 815-16.

12 Both the language of the agreement and the November 1989
13 declaration and memorandum of Scientology attorney Heller
14 illustrate that confidentiality was indispensable to effectuate
15 the intention of both Armstrong and Scientology. Indeed, a review
16 of the agreement makes it clear that both parties desired to
17 terminate their disputatious interactions with one another and
18 leave one another alone. Thus, while the language of paragraphs 7
19 and 10 used the word "Plaintiff," it is apparent that the
20 provisions set forth therein also applied to "Scientology," but
21 that the parties saw no necessity to expressly state such
22 application of said provisions. If the omission had been called
23 to the parties' attention, they would have made said provisions
24 applicable to "Scientology" as well as to "Plaintiff." There is
25 nothing in the agreement that states that Scientology could make
26 whatever statements it wanted to about Armstrong, but that he
27 would have to remain silent no matter what aspersions were cast
28 his way.

29 Indeed, to impose such a condition would make no sense
30 because it would allow Scientology to literally re-write history
31 in order to suit its own ends without any regard to truth or
32

33 ³ One vital element in the construction of a contract is
34 the intention of the parties in relation to its execution. When
35 determining this intention, the court may look to the
36 circumstances surrounding the making of the agreement, including
37 the object, nature, and subject matter of the writing, and thereby
38 place itself for this purpose in the same situation in which the
39 parties found themselves at the time of contracting. Dunne &
40 Gaston v. Keltner (1975) 50 Cal.App.3d 560, 564.

1 accuracy. Armstrong's history in the litigation illustrates a
2 profound rejection of any such result. Thus, under the
3 circumstances there is a legal necessity for the Court to imply
4 that the settlement terms were reciprocal because not only would
5 it be grossly unfair to Armstrong since it was never his intent to
6 have his own personal history revised according to the
7 predilections of Scientology, but revisionist litigation is
8 anathema to the role of the Court as the forum wherein truth is
9 sought.

10 The agreement expressly states that Armstrong was not to
11 discuss his knowledge or experience with respect to Scientology.
12 The agreement is silent whether Scientology was prohibited from
13 discussing its knowledge of Armstrong. Therefore, to imply that
14 the parties' intention was for Scientology to be subject to the
15 same confidentiality as was Armstrong does not contravene any
16 express term of the agreement. Thus, to imply reciprocity would
17 not violate the intent of the parties. Indeed, to not imply such
18 a term would violate the expectations of Armstrong and deny him
19 the fruits of his bargain. "If without the implied obligation the
20 fruits of the contract would be denied to one of the parties, the
21 intent that such an obligation should not exist must clearly
22 appear from the express terms of the contract." Bergum v. Weber
23 (1955) 136 Cal.App.2d 389, 288 P.2d 623, 626. ^{4/}

24 B. Scientology Breached The Implied Covenants of
25 Confidentiality And Of Good Faith And Fair Dealing

26 In addition to the duties imposed upon the parties to a
27 contract by the terms of their agreement, the law implies in every
28 contract a covenant of good faith and fair dealing. Seaman's
Direct Buying Service, Inc. v. Standard Oil Co. (1984) 36 Cal.3d
752, 768. The implied promise requires each contracting party to
refrain from doing anything to impair the right of the other to
receive the benefits of the agreement. Betts v. Allstate Ins. Co.

⁴ In the alternative, if the Court were to conclude that
the provisions at issue were not reciprocal, Armstrong urges that
such provisions are unconscionable as a matter of law. Civil Code
§ 1670.5 (a). Thus, particularly in light of the page limitation
imposed by the Court on this opposition, Armstrong requests an
opportunity to present further evidence as to the setting, purpose
and effect to aid the Court in determining whether said provisions
are unconscionable as a matter of law. Id. at 1670.5 (b).

1 (1984) 154 Cal.App.3d 688, 705. This covenant not only imposes
2 upon each contracting party the duty to refrain from doing
3 anything which would render performance of the contract impossible
4 by any act of his own, but also the duty to do everything that the
5 contract presupposes that he will do to accomplish its purpose.
6 McWilliams v. Holton (1967) 248 Cal.App.2d 447, 451. The precise
7 nature and extent of the duties imposed by such implied promise
8 will depend upon the nature and purpose of the underlying contract
9 and the legitimate expectations of the parties. Tollefson v.
10 Roman Catholic Bishop (1990) 219 Cal.App.3d 843, 854. Thus,
11 regardless of its origin, the covenant of good faith and fair
12 dealing is designed to effectuate the intentions and reasonable
13 expectations of the parties reflected by mutual promises within
14 the contract. Ibid.

15 With respect to the agreement at bar, Scientology acted in
16 bad faith by unfairly depriving Armstrong of the benefit of the
17 bargain of the settlement agreement. Rather than leave its
18 history with Armstrong to rest silently in the past insulated by
19 mutual promises of confidentiality, Scientology resurrected its
20 old conflict with Armstrong when to do so suited whatever was its
21 particular litigation strategy of the moment. Such conduct
22 violates the implied covenant of good faith and fair dealing and
23 excuses counter-performance by Armstrong.

24 C. Due To Its Breaches, Scientology Cannot Enforce
25 Reciprocal Provisions Of The Agreement Against
26 Armstrong

27 A party complaining of a breach of contract is not entitled
28 to recover therefor unless he has fulfilled his obligations. He
29 who seeks to enforce a contract must show that he has complied
30 with the conditions and agreements of the contract on his part to
31 be performed. Pry Corporation of America v. Leach (1960) 177
32 Cal.App.2d 632, 639. A covenant is a promise to render some
33 performance. A breach of covenant excuses the other party's
34 performance. Witkin, 1 Summary of California Law (1987)
35 Contracts, § 723. Thus, one who himself breaches a contract
36 cannot recover for a subsequent breach by the other party, Silver
37 v. Bank of America (1941) 47 Cal.App.2d 639, 118 P.2d 891, 894,
38 because a party to a contract need not tender performance if the

1 conduct of the other party amounts to a refusal to perform.
2 United California Bank v. Maltzman (1975) 44 Cal.App.3d 41, 52.

3 IV. THE PROVISIONS OF THE AGREEMENT WHICH SEEK TO
4 SUPPRESS EVIDENCE OF DISCREDITABLE FACTS VIOLATE
5 PUBLIC POLICY

6 In addition to the fact the Scientology seeks to impose a
7 contractual standard on Armstrong when it would not require
8 adherence of itself, portions of the agreement are illegal.
9 Specifically, the agreement seeks to remove Armstrong from acting
10 adversely to Scientology in word and deed. Indeed, according to
11 Scientology, not only would Armstrong be precluded from clarifying
12 Scientology's self-serving distortions regarding his past
13 affiliation with the organization, but he also "shall not make
14 himself amenable to service of any such subpoena in a manner which
15 invalidates the intent of this provision." What Scientology is
16 seeking to do is to remove Armstrong, and all others like him,
17 from playing any role in the truth seeking process, whether such
18 process be in the public marketplace of ideas, or in the truth-
19 seeking forum provided by the judiciary. Thus, by eliminating
20 those who are knowledgeable of its history and practices,
21 Scientology seeks, quite literally, to shape public opinion and
22 skew judicial decision-making by writing its own script without
23 regard to the truth.

24 It is a fundamental rule of construction of contracts that
25 all applicable laws in existence when an agreement is made, which
26 laws the parties are presumed to know and have in mind,
27 necessarily enter into the contract and form a part of it without
28 any stipulation to that effect, as if they were expressly referred
to and incorporated in the agreement. People v. Hadley (1967) 257
Cal.App.2d Supp. 871, 881.

23 In his work Equity Jurisprudence (4th Ed.1918) § 397 at 738,
24 Professor Pomeroy states:

25 Whenever a party, who as an actor, sets the judicial
26 machinery in motion to obtain some remedy, has violated
27 conscience, good faith, or other equitable principle, in
28 his prior conduct, then the doors of the court will be
shut against him in limine; the court will refuse to
interfere on his behalf, to acknowledge his right, or to
award him any remedy. [Emphasis added.]

Thus, where a contract is made either (1) to achieve an
illegal purpose, or (2) by means of consideration that is not

1 legal, the contract itself is void. Witkin, Summary of California
2 Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396.

3 A party need not plead the illegality as a defense and the
4 failure to do so constitutes no waiver. In fact, the point may be
5 raised at any time, in the trial court or on appeal, by either the
6 parties or on the court's own motion. Id. at § 444, at 397;
7 LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75 ["When the court
8 discovers a fact which indicates that the contract is illegal and
9 ought not to be enforced, it will, of its own motion, instigate an
10 inquiry in relation thereto."]; Lewis & Queen v. M.M. Ball Sons
11 (1957) 48 Cal.2d 141, 147-148 ["[T]he court has both the power
and the duty to ascertain the true facts in order that it may not
unwittingly lend its assistance to the consummation or
encouragement of what public policy forbids [and] may do so on its
own motion."].

12 Thus, the court will look through provisions that may appear
13 valid on their face, and with the aid of parol evidence, determine
14 that the contract is actually illegal or is part of an illegal
15 transaction. Id. 48 Cal.2d at 148 ["[A] court must be free to
16 search out illegality lying behind the forms in which the parties
have cast the transaction to conceal such illegality."]; Witkin, §
17 445 at 398.

18 There are two reasons for the rule prohibiting judicial
enforcement, by any court, of illegal contracts.

19 [T]he courts will not enforce an illegal bargain or lend
20 their assistance to a party who seeks compensation for
an illegal act [because] . . . Knowing that they will
21 receive no help from the courts . . . the parties are
less likely to enter into an illegal agreement in the
first place.

22 Lewis & Queen, supra, 48 Cal.2d at 149 [308 P.2d at 719].

23 This rule is not generally applied to secure justice
24 between parties who have made an illegal contract, but
25 from regard for a higher interest - that of the public,
whose welfare demands that certain transactions be
discouraged. [Emphasis added.]

26 Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254.

27 Illegal contracts are matters which implicate public policy.
Public policy has purposefully been a "vague expression . . .
28 [that] has been left loose and free of definition in the same
manner as fraud." Safeway Stores v. Hotel Clerks Intn'l Ass.

1 (1953) 41 Cal.2d 567, 575, 261 P.2d 721. Public policy means
2 "anything which tends to undermine that sense of security for
3 individual rights, whether of personal liberty or private
4 property, which any citizen ought to feel is against public
5 policy." Ibid. Therefore, "[a] contract made contrary to public
6 policy may not serve as the foundation of any action, either in
7 law or in equity, [Citation] and the parties will be left where
8 they are found when they come to court for relief. [Citation.]"
Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454,
296 P.2d 554.

9 It is well settled that agreements against public policy
10 and sound morals will not be enforced by the courts. It is a
11 general rule that all agreements relating to proceedings in
court which involve anything inconsistent with [the] full and
impartial course of justice therein are void, though not open
to the actual charge of corruption.

12 Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36;

13 Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492

14 The consideration for a promise must be lawful. Civil Code §
15 1607. Moreover, "[i]f any part of a single consideration for one
or more objects, or of several considerations for a single object,
is unlawful, the entire contract is void." Civil Code § 1608;

16 Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606. "In
17 other words, where the illegal consideration goes to the whole of
18 the promise, the entire contract is illegal." Witkin, § 429 at
386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and
19 intention of the parties [to violate public policy] entered so
20 fundamentally into the inception and consideration of the
21 transaction as to render the terms of the contract nonseverable,
and it is wholly void."].

22 "Agreements to suppress evidence have long been held void as
23 against public policy, both in California and in most common law
24 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the
25 California Court of Appeal adopted section 557 of the Restatement
26 of the Law of Contracts prohibiting as illegal those agreements
27 which sought to suppress the disclosure of discreditable facts.
The court stated:

28 A bargain that has for its consideration the nondisclosure of
discreditable facts . . . is illegal. . . . In many cases

1 falling within the rule stated in the section the bargain is
2 illegal whether or not the threats go so far as to bring the
3 case within the definition of duress. In some cases,
4 moreover, disclosure may be proper or even a duty, and the
5 offer to pay for nondisclosure may be voluntarily made.
6 Nevertheless the bargain is illegal. Moreover, even though
7 the offer to pay for nondisclosure is voluntarily made and
8 though there is not duty to make disclosure or propriety in
9 doing so, a bargain to pay for nondisclosure is illegal.
10 [Emphasis added.]

11 Brown 28 Cal.App.2d at 618.

12 In Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 125
13 Cal.Rptr. 31, the court did not allow a breach of contract action
14 to be litigated because it involved a contract that was void for
15 illegality. In Allen, plaintiff filed a complaint for breach of
16 contract which he subsequently amended five times. Plaintiff, a
17 union member, was entitled by his collective bargaining agreement
18 to have a fair and impartial arbitration to determine the truth or
19 falsity of the allegations against him of theft and dishonesty.
20 The allegations of the amended complaints stated that there had
21 been an agreement between the parties whereby defendant laid off
22 plaintiff, defendant's employee, and allowed plaintiff to receive
23 unemployment benefits and union benefits. "Defendants also agreed
24 that they would not communicate to third persons, including
25 prospective employers, that plaintiff was discharged or resigned
26 for dishonesty, theft, a bad employment attitude and that
27 defendants would not state they would not rehire plaintiff." Id.
28 at 163. Plaintiff alleged there had been a breach in that
defendants had communicated to numerous persons, including
potential employers and the Department of Human Resources and
Development, that plaintiff was dishonest and guilty of theft and
for that reason had resigned for fear of being discharged for
those reasons, that plaintiff had a bad attitude and that
defendants would not rehire him. Plaintiff alleged as a result of
the breach he suffered a loss of unemployment benefits, union
benefits and earnings. The court held that the plaintiff had
bargained for an act that was illegal by definition, the
withholding of information from the Department of Human Resources
Development. It stated:

The nondisclosure was not a minor or indirect part of
the contract, but a major and substantial consideration
of the agreement. A bargain which includes as part of

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1 its consideration nondisclosure of discreditable facts
2 is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618
3 [83 P.2d 82.].) It has long been hornbook law that
4 consideration which is void for illegality is no
5 consideration at all. [Citation.] Id. 52 Cal.App.3d at
6 166.

7 The object of a contract must be lawful. Civil Code § 1550.
8 If the contract has a single object, and that object is unlawful,
9 the entire contract is void. Civil Code § 1598. Civil Code §
10 1667 defines unlawfulness as that which is either "[c]ontrary to
11 an express provision of the law," or is "[c]ontrary to the policy
12 of the express law, though not expressly prohibited" or is
13 "[o]therwise contrary to good morals."

14 Civil Code § 1668 states:

15 All contracts which have for their object, directly or
16 indirectly, to exempt anyone from responsibility for his
17 own fraud, or willful injury to the person or property
18 of another, or violation of law, whether willful or
19 negligent, are against the policy of the law.

20 Since an agreement to suppress evidence or to conceal a
21 witness is illegal, Witkin, § 611 at 550. Penal Code §§ 136,
22 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d
23 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80
24 Cal. 570, 571-572, and the combined effect of the "global
25 settlement" has been to remove the availability as witnesses of
26 most former high-ranking Scientologists, such can "lead to subtle
27 but deliberate attempts to suppress relevant evidence."
28 Williamson, 21 Cal.3d at 838.

29 **V. THE REQUEST FOR LIQUIDATED DAMAGES**
30 **AND AN INJUNCTION SHOULD BE DENIED**

31 The validity of a liquidated damages clause must be
32 determined in accordance with the facts and circumstances of each
33 case. Better Food Markets v. American Dist. Tel. Co. (1953) 40
34 Cal.2d 179. Scientology first breached the very provisions which
35 it claims Armstrong breached and for which alleged breach it now
36 seeks liquidated damages. Under these circumstances Scientology
37 is not entitled to such damages. Indeed, the very amount of the
38 damages indicates that such damages are void because they are a
39 penalty, not because such amount approximate the harm Scientology
40 claims Armstrong to have perpetrated.

41 Although Scientology seeks injunctive relief, due to its own

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1 violations of the provisions it would seek to enforce, its hands
2 are unclean. London v. Marco (1951) 103 Cal.App.2d 450, 453.
3 Moreover, the public has a First Amendment interest in fair
4 competition in the marketplace of ideas as well as in the fair
5 operation of the judiciary. If Scientology is allowed to suppress
6 evidence so that it can re-write history in its own self-serving
7 manner with no regard for the truth, the public suffers.
8 Alternatively, were the Court to find that liquidated damages are
9 properly applicable in this case, an injunction would be improper
10 because compensation would afford adequate relief. Civil Code §
11 3422.

12 CONCLUSION

13 Based upon the foregoing points and authorities, defendant
14 and cross-complainant Gerald Armstrong respectfully submits that
15 Scientology's motion to enforce the settlement agreement should be
16 summarily denied. In the alternative, however, Armstrong submits
17 that the motion before the Court is more akin to a motion for
18 summary judgment on what should have been a properly filed
19 complaint (with an opportunity to take discovery) for breach of
20 contract. Therefore, particularly because there are extremely
21 important rights which this Court must adjudicate, Armstrong
22 requests that the matter be set for a full evidentiary hearing so
23 that the intent of the parties regarding the agreement, and any
24 subsequent breaches thereof, can be ascertained.

25 DATED: November 18, 1991

26
27
28

TOBY L. PLEVIN
Attorney for Cross-Complainant

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PROOF OF SERVICE

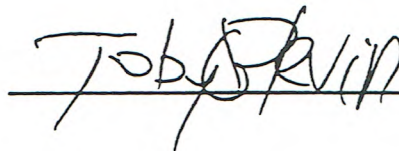
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 10700 SANTA MONICA BLVD, SUITE 4-300, LOS ANGELES, CALIFORNIA 90025. I served the following documents: DEFENDANT AND CROSS-COMPLAINANTS' OPPOSITION NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AGREEMENT; FOR FORLIQUIDATED DAMAGES AND TO ENJOIN FUTURE VIOLATIONS SETTLEMENT AGREEMENT; DECLARATION OF GERALD ARMSTRONG IN SUPPORT OF DEFENDANT AND CROSS-COMPLAINANT'S OPPOSITION TO NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AGREEMENT; FOR LIQUIDATED DAMAGES AND TO ENJOIN FUTURE VIOLATIONS; REQUEST FOR AN EVIDENTIARY HEARING

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California:

LAURIE J. BARTILSON
Bowles and Moxon
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028

<input checked="" type="checkbox"/> (By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California.
<input type="checkbox"/> (Personal Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
<input checked="" type="checkbox"/> (State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
<input type="checkbox"/> (Federal)	I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: November 18, 1991



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1 TOBY L. PLEVIN
2 ATTORNEY AT LAW
3 10700 SANTA MONICA BLVD, SUITE 4-300
4 LOS ANGELES, CALIFORNIA 90025
5 (213) 788-8660

6 Attorney for Defendant/Cross-Complainant
7 GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR AND IN THE COUNTY OF LOS ANGELES

10 CHURCH OF SCIENTOLOGY OF
11 CALIFORNIA, a California
12 Corporation,

13 Plaintiff,

14 vs.

15 GERALD ARMSTRONG; et al.,

16 Defendants.

No. C 420 153

DECLARATION OF GERALD
ARMSTRONG IN SUPPORT OF
DEFENDANT AND CROSS-
COMPLAINANT'S OPPOSITION
TO NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT AGREEMENT; FOR
LIQUIDATED DAMAGES AND TO
ENJOIN FUTURE VIOLATIONS

17 GERALD ARMSTRONG,

18 Cross-Complainant,

19 vs.

20 CHURCH OF SCIENTOLOGY OF
21 CALIFORNIA, a California
22 Corporation, et al.,

23 Cross-Defendants.

[FILED UNDER SEAL]

Date: December 3, 1991
Time: 9:00 a.m.
Dept: 56

24 I, Gerald Armstrong, declare and state:

25 1. I am making this declaration to support an opposition to
26 a motion brought by the Scientology organization in the case of
27 Church of Scientology of California v. Armstrong, Los Angeles
28 Superior Court No. C420153 to enforce the settlement agreement I
had entered into with the organization in December 1986. The

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1 facts hereinafter set forth are of my own first-hand knowledge.

2 2. I became involved with Scientology as a customer in 1969
3 in Vancouver, B.C. I worked on staff there in 1970 and in
4 February 1971 joined the Sea Organization (SO or Sea Org) in Los
5 Angeles. I was flown to Spain and joined the Sea Org's flag ship,
6 "Apollo," in Morocco. L. Ron Hubbard, the Sea Org's
7 "Commodore," was on board and operated Scientology internationally
8 through the "crew" which numbered, during my stay on board of four
9 and a half years, around four hundred. All my staff positions on
10 board involved personal contact with L. Ron Hubbard, Mary Sue
11 Hubbard, administrative organization staff and people in the ports
12 and countries the "Apollo" visited, and included "Ship's
13 Representative" (legal representative), "Port Captain" (public
14 relations officer), and "Information Officer" (intelligence
15 officer).

16 3. In the fall of 1975 after the ship operation moved
17 ashore in Florida I was posted in the Guardian's Office (GO)
18 Intelligence Bureau connected to Hubbard's Personal Office. From
19 December 1975 through June 1976 I held the post of Deputy LRH
20 External Communications Aide, a relay terminal for Hubbard's
21 written and telex traffic to and from Scientology organizations.
22 From July 1976 to December 1977 I was assigned, on Hubbard's
23 order, to the "Rehabilitation Project Force" (RPF), the SO prison
24 system. In 1978 I worked in Hubbard's cinematography crew in La
25 Quinta, California making movies under his direction until the
26 fall of that year when he again assigned me to the RPF, this time
27 for eight months first in La Quinta, then at a newly purchased
28 base in Gilman Hot Springs near Hemet, California. When I got out
of the RPF in the spring of 1979 and until the beginning of 1980 I

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1 worked in Hubbard's "Household Unit" (HU) at Gilman, the SO unit
2 which took care of Hubbard's house, personal effects, transport,
3 meals and so forth, as the "Purchaser," "Renovations In-Charge"
4 and "Deputy Commanding Officer HU."

5 4. Throughout 1980 and until I left the organization in
6 December 1981 I held the organization posts in Hubbard's "Personal
7 Public Relations Bureau" of "LRH Archivist" and "LRH Personal
8 Researcher." I assembled in Los Angeles an archive of Hubbard's
9 writings and other materials relating to his history to be used
10 as, inter alia, the basis for a biography to be written about the
11 man. I also worked in Los Angeles for the first few months of 1980
12 on Mission Corporate Category Sortout (MCCS), which had the
13 purpose of restructuring the Scientology enterprise so that
14 Hubbard could continue to control it without being liable for its
15 actions. (A tape recording of two meetings relating to MCCS's
16 actions subsequently became the subject of Church of Scientology
17 of California v. Zolin.) Beginning in the fall of 1980 and
18 continuing until my departure, I provided the biographical
19 writings and other materials, as I collected and organized them,
20 to Omar Garrison, who had contracted with the organization to
21 write the Hubbard biography. I interviewed many people who had
22 known Mr. Hubbard at periods throughout his life, including almost
23 all of his known living relatives. I traveled several thousand
24 miles collecting biographical information and conducting a
25 genealogy search, and arranged the purchase of a number of
26 collections of Hubbard-related documents and other materials from
27 individual collectors.

28 5. Through my research and study of documentary evidence I
was compelled to conclude that Mr. Hubbard had lied about his

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1 past, credentials, accomplishments, relationships and intentions.
2 I obtained evidence which disproved many of the claims made by
3 Hubbard in his biographies printed in Scientology publications and
4 used in promotion of the man and his philosophy and psychotherapy;
5 consequently I attempted to get the organization executives
6 responsible for these publications to correct the disproven
7 claims. As a result I was ordered to be security checked, an
8 invasive interrogation employing an electronic meter as a lie
9 detector, a procedure I had undergone many times in the Sea Org.
10 I had by this time obtained evidence which disproved the
11 significant representations Hubbard had made about himself or his
12 "technology" which had drawn me into and kept me in the
13 organization for over twelve years; e.g., that he was an engineer
14 and an atomic physicist, that he had been crippled and blinded in
15 combat in WW II and had cured himself with his mental science
16 discoveries, that it was a matter of medical record that he had
17 twice been pronounced dead, that his psychotherapy had been
18 subjected to rigorous scientific testing, that it cured all
19 psychosomatic ills and raised IQs a point per hour of therapy (I
20 had by this time had well over a thousand hours), that he had been
21 remunerated for his labors less than staff members were paid (in
22 my case between \$4.30 and \$17.20 per week throughout my 50 years),
23 and that he and his organization were ethical and well-
24 intentioned. When it became clear to me that I was not going to
25 be able to get the organization or Hubbard to admit to the lies
26 and take a more honest path I, and my wife Jocelyn, left the
27 organization.

28 6. Following my departure the organization published a
"Declaration" dated February 18, 1982 labelling me a "Suppressive

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1 Person (SP)." An SP is considered in Scientology completely
2 psychotic and destructive, one of the two and a half percent truly
3 evil people on the planet. SPs are viewed as enemies of
4 Scientology and mankind and are targets for the organization's
5 "Fair Game Policy," which states specifically that they may be
6 lied to, cheated, sued and destroyed without discipline of the
7 Scientologist committing such acts. The SP Declare also accused
8 me of "spreading destructive rumors about senior Scientologists."
9 I knew in early 1982 that I was the target of Guardian's Office
10 intelligence operations because certain friends were contacted and
11 interrogated about me by known GO intelligence personnel. The
12 organization also appropriated a set of photographs I had
13 entrusted with an associate, Virgil Wilhite, and when I demanded
14 their return told me to get a lawyer.

15 7. A few days later I met with attorney Michael Flynn who
16 agreed to defend me against the organization, which on April 22,
17 1982 published a second SP declare accusing me of eighteen
18 "crimes, high crimes and suppressive acts," including, inter alia,
19 promulgating false information about Hubbard and the organization.
20 In the late spring and summer of 1982 I obtained from Omar
21 Garrison with his permission some of the documents I had delivered
22 to him while in the organization which I considered I would need
23 to defend myself against the organization's charges in the SP
24 declares and whatever actions they would bring against me in the
25 non-Scientology courts. I sent these to Mr. Flynn and to Contos
26 and Bunch, a California law firm which by then had agreed to
27 represent me in Scientology litigation. The organization filed
28 suit against me in the Los Angeles Superior Court on August 2,
1982 and the Hubbard biography documents I had sent to my lawyers

1 were ordered by the Court to be deposited with the clerk where
2 they stayed until trial in the spring of 1984.

3 8. In August and September 1982 the organization employed a
4 number of private investigators to surveil and harass my wife and
5 me. During that period one of these investigators assaulted me
6 bodily, and another struck my body with a car, and attempted to
7 involve me ⁱⁿ a freeway accident by getting in front of my car and
8 slamming on his brakes and pulling alongside my car and swerving
9 into my lane. The organization also attempted to get the Los
10 Angeles Police Department to bring criminal charges against me in
11 connection with the Hubbard documents which had become the subject
12 of the litigation in the Superior Court.

13 9. I filed a cross-complaint in 1982 against various
14 Scientology corporations which was bifurcated from the underlying
15 document case and never tried because it settled in December 1986.
16 The document case was tried without a jury by Judge Paul G.
17 Breckenridge, Jr. who rendered a decision on June 20, 1984.
18 Between that time and the settlement the organization continued
19 its campaign against me which included at least these acts:

- 20 ▶ attempted entrapment;
- 21 ▶ illegal videotaping;
- 22 ▶ filing false criminal charges against me with the Los
23 Angeles District Attorney;
- 24 ▶ filing false criminal charges against me with the Boston
25 office of the FBI;
- 26 ▶ filing false declarations to bring contempt of court
27 proceedings against me on three occasions;
- 28 ▶ obtaining perjured affidavits from English private
investigators, who had harassed me in London in 1984, accusing me

1 of distributing "sealed" documents;

2 ▶ international dissemination of Scientology publications
3 falsely accusing me of crimes, including crimes against humanity;
4 and

5 ▶ culling and disseminating information from my supposedly
6 confidential auditing (psychotherapy) file.

7 10. On December 5, 1986 I was flown to Los Angeles, as were
8 several other of Mr. Flynn's clients with claims against the
9 organization to participate in a "global settlement." After my
10 arrival in LA I was shown a copy of a document entitled "Mutual
11 Release of All Claims and Settlement Agreement," hereinafter
12 referred to as "the settlement agreement," and some other
13 documents, which I was expected to sign.

14 11. The settlement agreement has now become a public
15 document, and it and its effects are issues in various lawsuits
16 now pending.

17 12. Upon reading the settlement agreement draft I was
18 shocked and heartsick. I told Mr. Flynn that the condition of
19 "strict confidentiality and silence with respect to [my]
20 experiences with the [organization]" (settlement agreement, para.
21 7D), since it involved over seventeen years of my life, was
22 impossible. I told him that the "liquidated damages" clause
23 (para. 7D) was outrageous; that pursuant to the settlement
24 agreement I would have to pay \$50,000.00 if I told a doctor or
25 psychologist about my experiences from those years, or if I put on
26 a resume what positions I had held during my organization years.
27 I told Mr. Flynn that the requirements of non-amenability to
28 service of process (para. 7H) and non-cooperation with persons or
organizations adverse to the organization (paras. 7G, 10) were

1 obstructive of justice. I told him that I felt that agreeing to
2 leave the organization's appeal of the decision in Armstrong and
3 not respond to any subsequent appeals (para. 4B) was unfair to the
4 courts and all the people who had been helped by the decision. I
5 told Mr. Flynn that an affidavit the organization was demanding
6 that I sign along with the settlement agreement was false. That
7 document, which I do not have, stated, inter alia, that my
8 disagreements with the organization had been with prior
9 management, and not with the then-current leadership. In fact
10 there had been no management change and I had the same
11 disagreements with the organization's "fair game" policies and
12 actions which had continued without change up to the time of the
13 settlement. I told him that I was being asked to betray
14 everything and everyone I had fought for against an organization
15 which was based upon injustice.

16 13. In answer to my objections to the settlement agreement,
17 Mr. Flynn said that the silence and liquidated damages clauses,
18 and anything which called for obstruction of justice were not
19 worth the paper they were printed on. He said the same thing a
20 number of times and a number of ways; e.g., that I could not
21 contract away my Constitutional rights; that the conditions were
22 unenforceable. He said that he had advised the organization
23 attorneys that those conditions in the settlement agreement were
24 not worth the paper they were printed on, but that the
25 organization, nevertheless, insisted on their inclusion in the
26 settlement agreement and would not agree to any changes. He
27 pointed out the clauses concerning my release of all claims
28 against the organization to date and its release of all claims
against me to date (paras. 1,4,5,6,8) and said that they were the

1 essential elements of the settlement and were what the
2 organization was paying for.

3 14. Mr. Flynn also said that everyone was sick of the
4 litigation and wanted to get on with their lives. He said that he
5 was sick of the litigation, the threats to him and his family and
6 wanted out. He said that as a part of the settlement he and all
7 co-counsels had agreed to not become involved in organization-
8 related litigation in the future. He expressed a deep concern
9 that the courts in this country cannot deal with the organization
10 and its lawyers and their contemptuous abuse of the justice
11 system. He said that if I didn't sign the documents all I had to
12 look forward to was more years of harassment and misery. One of
13 Mr. Flynn's other clients, Edward Walters, who was in the room
14 with us during this discussion, yelled at me, accusing me of
15 killing the settlement for everyone, and that everyone else had
16 signed or would sign, and everyone else wanted the settlement.
17 Mr. Flynn said that the organization would only settle with
18 everyone together; otherwise there would be no settlement. He did
19 agree to ask the organization to include a clause in my settlement
20 agreement allowing me to keep my creative works relating to L. Ron
21 Hubbard or the organization (para. 7L).

22 15. Mr. Flynn said that a major reason for the settlement's
23 "global" form was to give the organization the opportunity to
24 change its combative attitude and behavior by removing the threat
25 he and his clients represented to it. He argued that the
26 organization's willingness to pay us substantial sums of money,
27 after its agents and attorneys had sworn for years to pay us "not
28 one thin dime" was evidence of a philosophic shift within the
organization. I argued that the settlement agreement evidenced

1 the unchanged philosophy of fair game, and that if the
2 organization did not use the opportunity to transform its
3 antisocial nature and actions toward its members, critics and
4 society I would, a few years hence, because of my knowledge of
5 organization fraud and fair game, be again embroiled in its
6 litigation and targeted for extralegal attacks.

7 16. Regarding the affidavit the organization required that I
8 sign, Mr. Flynn said that the "disagreement with prior management"
9 could be rationalized as being a disagreement with L. Ron Hubbard,
10 and since Mr. Hubbard had died in January 1986 it could be said
11 that I no longer had that disagreement. Mr. Flynn said that the
12 organization's attorneys had promised that the affidavit, which
13 all the settling litigants were signing, would only be used by the
14 organization if I began attacking it after the settlement, and
15 since I had no intention of attacking the organization the
16 affidavit would never see the light of day.

17 17. During my meeting with Mr. Flynn in Los Angeles I found
18 myself facing a dilemma which I reasoned through in this way. If
19 I refused to sign the settlement agreement and affidavit all the
20 other settling litigants, many of whom had been flown to Los
21 Angeles in anticipation of a settlement, would be extremely
22 disappointed and would continue to be subjected to organization
23 harassment for an unknown period of time. I had been positioned
24 in the settlement drama as a deal-breaker and would undoubtedly
25 lose the support of some if not all of these litigants, several of
26 whom were key witnesses in my case against the organization.
27 Although I was certain that Mr. Flynn and my other lawyers would
28 not refuse to represent me if I did not sign the documents I also
knew that they all would view me as a deal-breaker and they would

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1 be as disappointed as the other litigants in not ending the
2 litigation they desperately wanted out of. The prospect of
3 continuing the litigation with unhappy and unwilling attorneys on
4 my side, even though my cross-complaint was set for trial within
5 three months, was distressing. On the other hand, if I signed the
6 documents, all my co-litigants, some of whom I knew to be in
7 financial trouble, would be happy, the stress they felt would be
8 reduced and they could get on with their lives. Mr. Flynn and the
9 other lawyers would be happy and the threat to them and their
10 families would be removed. The organization would have the
11 opportunity they said they desired to clean up their act and start
12 anew. I would have the opportunity to get on with the next phase
13 of my life and the financial wherewithal to do so. I was also not
14 unhappy to at that time not have to testify in all the litigation
15 nor to respond to the media's frequent questions. If the
16 organization continued its fair game practices toward me I knew
17 that I would be left to defend myself and I accepted that fact.
18 So, armed with Mr. Flynn's advice that the conditions I found so
19 offensive in the settlement agreement were not worth the paper
20 they were printed on, and the knowledge that the organization's
21 attorneys were also aware of that legal opinion, I put on a happy
22 face and the following day went through the charade of a
23 videotaped signing.

24 18. It was my understanding and intention at the time of the
25 settlement that I would honor the silence and confidentiality
26 conditions of the settlement agreement, and that the organization
27 had agreed to do likewise.

28 19. Following the December 1986 settlement the organization
continued its fair game campaign against me in violation of the

spirit and letter of the settlement agreement. I detailed the post-settlement violations I knew about in my declaration of March 15, 1990, which was filed in the Court of Appeal as an exhibit to a document entitled "Defendant's Reply to Appellants' Opposition to Petition for Permission to File Response and for Time" and served on the Los Angeles Superior Court on March 24, 1990, and my declaration of December 25, 1990, which was filed in the Court of Appeal as "Defendant's Appendix" to "Defendant's Brief" and served on the Los Angeles Superior Court on December 28, 1990. I request that this Court take Judicial Notice of these declarations and the exhibits thereto as they are part of the record in this case.

20. The organization's violations of the settlement agreement include at least:

a) Use in 1987 of my name and a false and unfavorable description of my organizational experiences in a "dead agent" pack relating to Bent Corydon, pages 11, 12, 18 and 29 from which are attached hereto true and correct copies as Exhibit A;

b) Filing several false affidavits, attached herewith are true and correct copies as Exhibit B (Kenneth David Long's First Affidavit dated October 5, 1987), Exhibit C (Kenneth Long's Second Affidavit dated October 5, 1987), Exhibit D (Kenneth Long's Third Affidavit dated October 5, 1987), Exhibit E (Sheila MacDonald Chaleff's First Affidavit dated October 5, 1987), Exhibit F (Kenneth Long's Fourth Affidavit dated October 7, 1987), and Exhibit G (Kenneth Long's Fifth Affidavit dated October 8, 1987) in the case of Church of Scientology of California v. Russell Miller and Penguin Books Limited, Case no. 6140 in the High Court of Justice in London England, accusing me of violations of court orders in the Armstrong case, and labeling me "an admitted agent

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1 provocateur of the U.S. Federal Government;"

2 c) Delivering a copy of an edited version of the 1984
3 illegal videotape of me, a photocopy of the cassette for which
4 showing the business card of organization private investigator
5 Eugene Ingram is attached herewith is a true and correct copy as
6 Exhibit H, to the London Sunday Times;

7 d) Threatening me with lawsuits on six occasions as set
8 forth in my March 15, 1990 and December 25, 1990 declarations of
9 which I have asked the Court to take judicial notice, above;

10 e) Threatening to release a description of a dream I had
11 had, and which the organization had stolen from a friend of mine,
12 if I did not assist them in preventing Bent Corydon from gaining
13 access to the Armstrong court file;

14 f) Using my name and a false rendition of the
15 organization's 1984 videotape operation where they attempted to
16 entrap me into the commission of a crime in the Complaint filed in
17 the case of Church of Scientology International v. 17 Agents, Case
18 No. 91-4301 SVW filed August 12, 1991 in US District Court,
19 Central District of California, page 14 from which is attached
20 herewith is a true and correct copy as Exhibit I;

21 g) Using the same false rendition of the 1984 "Armstrong
22 Operation," perjurious declarations by organization lawyers and a
23 general attack on my character and truthfulness in various
24 pleadings filed in August 1991 in the case of Aznaran v. Church of
25 Scientology of California, et al, No. CV 88-1786 JMI in U.S.
26 District Court, Central District of California. Exhibit J is a
27 true and correct copy of pages 2, 3, 33, and 34 of "Reply in
28 Support of Defendants' Motion for Summary Judgment Based on the
Statute of Limitations." Exhibit K is a true and correct copy

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1 which comprises pages 4, 5, and 6 of "Supplemental Memorandum in
2 Support of Defendants' Motion to Dismiss Complaint with
3 Prejudice." Exhibit L is a true and correct copy of pages 2 - 5
4 and pages 9 and 10 (the declaration of attorney Laurie J.
5 Bartilson dated August 27, 1991) of "Defendants' Opposition to Ex
6 Parte Application to File Plaintiffs' Genuine Statement of Issues
7 [sic] re Defendants' Motions (1) to Exclude Expert Testimony; and
8 (2) for Separate Trial on Issues of Releases and Waivers; Request
9 that Opposition Be Stricken." I have included only a few pages
10 from these documents in the interest of economy, but will file the
11 complete documents if the Court wishes. The organization has
12 included my declaration of September 3, 1991 "Regarding Alleged
13 'Taint' of Joseph A. Yanny, Esquire", also filed in the Aznaran
14 case in response to its allegations in these pleadings, as Exhibit
15 N to its motion to enforce the settlement.

16 21. Attached hereto as Exhibit M is a true and correct copy
17 of a Notice of Motion and Motion of Defendant Author Services,
18 Inc. to Delay or Prevent the Taking of Certain Third Party
19 Depositions by Plaintiff; Memorandum of Points and Authorities;
20 Declarations of Lawrence E. Heller and Howard Schomer in Support
21 Thereof filed on or about November 1, 1989 in the case entitled
22 Corydon v. Church of Scientology International, Inc., et al., IASC
23 No. C694401.

24 22. In late 1987 I received a telephone call from a reporter
25 for the London Sunday Times who told me that the organization had
26 delivered to the newspaper a stack of documents concerning me,
27 including materials from the 1984 illegal videotape "Armstrong
28 Operation," and he asked me to comment about them. I was greatly
saddened by this news, but told the reporter only that I

1 considered the organization's action a violation of its agreement
2 with me and I would not comment further.

3 23. When I was threatened in 1988 with exposure of the
4 stolen dream recitation (see 3-15-90 declaration, para. 40), I
5 considered I was being blackmailed. In the hope that by my
6 example I would deter further such conduct, I did not violate the
7 settlement agreement. I learned this past August 1991 in
8 Johannesburg, South Africa that the organization had given a copy
9 of the dream recitation, which had been specifically sealed in the
10 Armstrong litigation, to its representatives in that country.

11 24. When I had several times been threatened by organization
12 attorney Larry Heller that I would be sued if I did not obstruct
13 justice as directed by the organization, and when it had become
14 obvious to me that I could not avoid a confrontation with the
15 organization (see 3-15-90 declaration, paras. 4-8, 44) did I
16 respond to defend myself and to correct the injustices created by
17 the settlement agreement and the organization's violations
18 thereof.

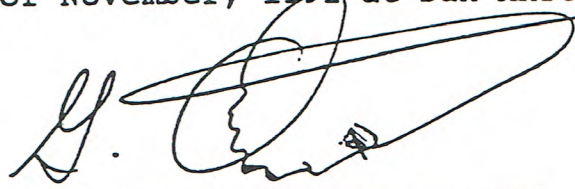
19 25. The first action I took was to file on February 28, 1990
20 in the California Court of Appeal, Second Appellate District, in
21 the appeal the organization had maintained from the June 20, 1984
22 decision in Armstrong, a document entitled Respondent's Petition
23 for Permission to File Response and for an Extension of Time to
24 File Response," attached hereto as Exhibit N. I did so in part
25 because in my research of my rights following my recognition that
26 I could not avoid involvement I discovered that my agreement to
27 not respond pursuant to the settlement contract was an obstruction
28 of justice. After the Court of Appeal granted my petition on
March 9, 1990, I did thereafter file a respondent's brief.

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1 Thereafter, on July 29, 1991 an opinion issued in that appeal
2 upholding the trial court's decision on the merits.

3 I declare under the penalty of perjury under the laws of the
4 State of California that the foregoing is true and correct.

5 Executed this 17th day of November, 1991 at San Anselmo,
6 California.

A handwritten signature in dark ink, appearing to read 'G. Armstrong', is written over a horizontal line. The signature is stylized with a large loop and a flourish.

Gerald Armstrong

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24 UNITED STATES DISTRICT COURT

25 FOR THE CENTRAL DISTRICT OF CALIFORNIA

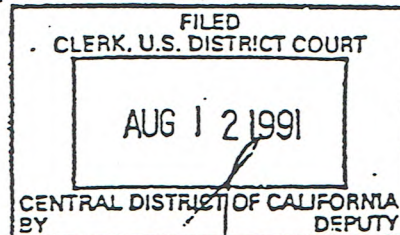
26 CHURCH OF SCIENTOLOGY
27 INTERNATIONAL,

28 Plaintiff,

vs.

29 C. PHILLIP XANTHOS; ALAN
30 LIPKIN; MARCUS OWENS; MARVIN
31 FRIEDLANDER; S. ALLEN
32 WINBORNE; ROBERT BRAUER;
33 JOSEPH TEDESCO; CHARLES
34 RUMPH; RAYMOND JUCKSCH;
35 MELVYN YOUNG; CARL CORSI;
36 GREGORY ROTH; WILLIAM
37 CONNETT; KEITH ALAN KUHN;
38 CHARLES JEGLIKOWSKI; MELVIN
39 BLOUGH; RODERICK DARLING;
40 and DOES 1 - 200,

Defendants.



No.

COMPLAINT FOR DAMAGES FOR AND
INJUNCTIVE RELIEF FROM:

1. FOURTH AMENDMENT VIOLATIONS;
2. FIRST AMENDMENT VIOLATIONS;
3. DUE PROCESS VIOLATIONS UNDER
THE FIFTH AMENDMENT; AND
4. EQUAL PROTECTION VIOLATIONS
UNDER THE FIFTH AMENDMENT.

JURY TRIAL DEMANDED

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1 and October 5, 1984 and January 18 and April 22, 1985 requested
2 the applicants comment on specific allegations made by LA CID
3 informants that were at the heart of the ongoing CID
4 investigation. FOIA records and discovery in FOIA litigation
5 reveal a continuous flow of information from EO to LA CID.

6 15. It is now clear, however, that defendants and the IRS
7 were not dealing in good faith, but rather, were merely asking
8 for and receiving voluminous financial and other records from
9 plaintiff and the other churches without any intention of ever
10 granting any section 501(c)(3) exemptions and as an unlawful
11 means of obtaining data for LA CID. The use of the exemption
12 process to obtain information for a criminal investigation
13 deprived plaintiff of its rights guaranteed by the First,
14 Fourth and Fifth Amendments to the United States Constitution,
15 and violated specific IRS rules designed to protect those
16 rights. The Internal Revenue Manual contains specific
17 provisions which require EO to "immediately suspend" an inquiry
18 if EO learns that "an assigned case involves a taxpayer who is
19 the subject of a criminal investigation." The EO agents
20 responsible for plaintiff's exemption application did not
21 suspend the civil proceeding, but instead continued to use it
22 as a means for gathering information for CID.

23 16. Between 1984 and 1986, LA CID conducted an extensive
24 criminal investigation of plaintiff, other Scientology
25 churches, and individual Scientologists, under the auspices of
26 defendant Connett, the then-District Director, defendant
27 Xanthos, the LA CID Branch Chief and defendant Lipkin, the
28 assigned LA CID Group Manager. That investigation included the

1 use of mail covers, paid informants, summonses to dozens of
2 financial institutions and church members, and infiltration of
3 Scientology's ecclesiastical hierarchy. The infiltration of
4 the Church was planned as an undercover operation by the
5 LA CID along with former Church member Gerald Armstrong, who
6 planned to seed church files with forged documents which the
7 IRS could then seize in a raid. The CID actually planned to
8 assist Armstrong in taking over the Church of Scientology
9 hierarchy which would then turn over all Church documents to
10 the IRS for their investigation. The CID further coordinated
11 this plan with the Ontario Provincial Police in Canada, through
12 direct contacts and exchange of information, hoping that
13 through simultaneous assaults the "momentum of . . . charges
14 will cause [Scientology] to collapse." Thus, the documents
15 being channelled from EO to CID were being used for the
16 unlawful purpose of forwarding criminal investigations in both
17 the United States and in Canada.

18 17. That criminal investigation, the results of which
19 were ultimately rejected in full by the Department of Justice,
20 was doomed from its inception because it was based upon a
21 faulty premise -- that plaintiff and the other Churches were
22 engaging in criminal conduct (conspiracy to interfere with the
23 collection of taxes) by the mere fact that they had applied for
24 section 501(c)(3) exemptions. In other words, at the time that
25 EO was allegedly processing the exemption applications, the IRS
26 had already made a determination that the exemption
27 applications were criminal instruments because the applying
28 churches had already been prejudged as non-exempt.

1 other Scientology entities or parishioners, the harm alleged
2 herein will continue and the Constitutional violations will
3 persist to plaintiff's detriment.

4 WHEREFORE, plaintiff Church of Scientology International
5 prays that:

6 78. Defendants, and each of them, be preliminarily and
7 permanently enjoined from any and all further participation in
8 and responsibility for any matter involving the IRS and
9 plaintiff or any other Scientology Church or entity, or any
10 Scientology parishioner;

11 79. Plaintiff be awarded damages according to proof,
12 which are believed to be in excess of \$20,792,850 in
13 direct expenditures by plaintiff, and consequential and
14 resulting damages in an amount to be proven at trial, but which
15 is in an amount in excess of \$100 million, and

16 80. The Court award and order such other and further
17 relief that it deems appropriate under these circumstances.

18 Dated: August 12, 1991

Respectfully submitted,

19 QUINN, KULLY AND MORROW

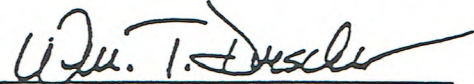
20 COOLEY, MANION, MOORE &
JONES, P.C.

21 BERRY & CAHALAN

22 BOWLES & MOXON

23 WILLIAM T. DRESCHER

24
25 By:


William T. Drescher

26
27 Attorneys for Plaintiff
28 CHURCH OF SCIENTOLOGY
INTERNATIONAL

001406

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Attorneys for Defendant
AUTHOR SERVICES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

CASE No. CV 88-1786 JMI(Ex)

REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
BASED ON THE STATUTE OF
LIMITATIONS

DATE: September 9, 1991

TIME: 10:00 a.m.

COURTROOM: Hon. James M. Ideman

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1 judgment on all of the Aznarans' claims is mandated, and this 3
2 1/2 year drain on everyone's resources will reach its proper
3 conclusion: judgment for all defendants on all counts.

4 Confronted with that insurmountable hurdle, the Aznarans,
5 their present counsel, and Joseph A. Yanny, defendants' former
6 counsel and the Aznarans' de facto counsel, responded
7 predictably. They once again change and contradict their earlier
8 sworn testimony to "support" never-before alleged legal theories
9 conjured up to meet the exigencies of the moment.

10 On February 20, 1991, defendants filed a motion asking the
11 Court to order the Aznarans and their counsel not to indulge
12 further in their habitual changing of their sworn versions of the
13 facts and the legal theories of their case. That motion was
14 necessitated by the Aznarans continuously supplying declarations
15 that were at odds with their earlier sworn testimony and because
16 their counsel changed their legal theories each time he was
17 called upon to articulate them, to the point that even their
18 legal theories were in conflict. That motion remains under
19 submission. Now, faced with meritorious motions for summary
20 judgment, the Aznarans have once again changed the facts,

21 contradicted their earlier testimony, created an entirely new
22 story concerning their case and again redefined their theories.

23 The Aznarans' and their counsel's repositioning of the facts
24 and the legal theories they espouse is hardly surprising for two
25 reasons. First, as set forth in defendants' February 20, 1991
26 motion papers on this point, they have done so throughout this
27 entire litigation. Second, and even more telling, the utter
28 disregard of the truth that the Aznarans have made the trademark

1 of their litigation effort, bears the unmistakable signature of
2 Gerald Armstrong, whose theory of litigating against Churches of
3 Scientology, as captured on videotape in 1984, is not to worry
4 about what the facts really are, but instead to choose a state of
5 "facts" that should survive a challenge by the Church and "just
6 allege it." [Declaration of Earle C. Cooley, Ex. F].

7 It is clear that Armstrong's influence and philosophy
8 permeates the Aznarans' oppositions. Armstrong was in the office
9 of the Aznarans' counsel, Ford Greene, for most of the week in
10 which the Aznarans' opposition were created. [Ex. E, Declaration
11 of Sam Brown, ¶ 3]. On August 19, 1991, Armstrong admitted to
12 one of defendants' counsel that he was at Greene's office
13 "helping out." [Ex. B, Declaration of Laurie J. Bartilson.]
14 Even more disturbingly to a Court that disqualified Barry Van
15 Sickles as counsel for the Aznarans because his presence
16 represented an improper "extension of Yanny" into these
17 proceedings and disqualified Yanny himself because his presence
18 was "highly prejudicial" to defendants, Armstrong is a paralegal
19 who was hired by Yanny to work on the Aznaran case [Transcript of
20 Proceedings, August 6, 1991, at 25, Ex. 1 to Ex. B, Declaration
21 of Laurie Bartilson] and thus had no business being anywhere near
22 the opposition because: (1) Yanny was disqualified from
23 representing the Aznarans here; and (2) Yanny has been
24 preliminarily enjoined from directly or indirectly representing
25 the Aznarans [Reporter's Transcript of August 6, 1991, at 34].

26 In essence, the facts demonstrate and the Aznarans admit
27 that they long knew of their purported injuries, but that the
28 limitations period did not begin to run until they had come to

1 1987 and received a low-interest loan of \$20,000 and letters of
2 recommendation for future employment, which Ms. Aznaran stated
3 were "good consequences" of leaving. V.A. Dep. at 1185.

4 This situation contrasts sharply with Wyatt. The key point
5 in Wyatt is that even after the plaintiffs learned of the fraud,
6 and even after they had hired attorneys, there was no way to get
7 out of their legal and economic obligations to defendants prior
8 to judicial action. Thus in Lewelling v. Farmers Ins. of
9 Columbus, Inc., 879 F.2d 212 (6th Cir. 1989), the court, in
10 applying California law, made clear that Wyatt is an unusual
11 exception to the general rule that a fraud claim "begins to run
12 when an individual becomes aware of fraudulent harm." Id. at 217.
13 For the Wyatt exception to apply there must be "evidence . . .
14 that sheer economic duress or overpowering influence rendered
15 plaintiffs incapable of acting to protect their legal rights."
16 Id. Nothing of the kind is present here. When the Aznarans
17 decided to leave their staff positions but remain Scientologists
18 in good standing, they did just that, without violating any legal
19 or economic obligations. Wyatt, therefore, is wholly
20 inapplicable.

21 IV. THE COURT SHOULD DISREGARD THE REMAINDER OF THE OPPOSITION

22 As detailed in the Preliminary Statement, supra, the real
23 thrust of the Aznarans' Opposition is not the foregoing,
24 ineffectual legal contentions, but rather the "just allege it"
25 philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's
26 continuing involvement despite this Court's explicit order, and
27 the willingness of the Aznarans and their counsel to say anything
28 at any time to try to breathe life into their false and moribund

1 claims. Armstrong's "helping out" while the Opposition was
2 concocted not only reveals the continuing taint of Yanny's
3 involvement with this case, it establishes the guiding principle
4 that resulted in an Opposition that avoids cogent analysis of
5 pertinent law and fact and instead seeks to prejudice the Court
6 to the point of overlooking the motion, the relevant matters, and
7 the fact that the Aznarans have all but expressly conceded that
8 all their claims are time-barred.

9 Armstrong's philosophy of litigation is that facts and the
10 truth are irrelevant and that all that is required to prevail is
11 to allege whatever needs to be alleged is spelled out in a
12 videotape of Armstrong made in 1984 as part of a police-
13 authorized private investigation of individuals, including
14 Armstrong, who attempted to seize control of the Church. [Cooley
15 Dec., ¶ 4] In that tape, in the context of a discussion of
16 attempting to prove facts in a civil proceeding where evidence
17 was unavailable, Armstrong (under the mistaken belief that he was
18 speaking with an ally) stated what a civil litigant should do
19 when faced with a lack of evidence:

20 They can allege it. They can allege it.

21 They don't even have -- they can allege it.

22 * * *

23 Fucking say the organization destroys the
24 documents.

25 * * *

26 Where are the -- We don't have to prove a
27 goddamn thing. We don't have to prove shit;
28 we just have to allege it.

001412

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Plaintiffs,

v.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

) CASE No. CV 88-1786 JMI(Ex)
)
) SUPPLEMENTAL MEMORANDUM IN SUPPORT
) OF DEFENDANTS' MOTION TO DISMISS
) COMPLAINT WITH PREJUDICE;
) DECLARATIONS OF SAM BROWN, THORN
) SMITH, EDWARD AUSTIN, LYNN R.
) FARNY AND LAURIE J. BARTILSON

) DATE: To be determined
) TIME: To be determined
) COURTROOM: Hon. James M. Ideman

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1 to have a courier pick up the oppositions, the telephone was
2 answered by a person who identified himself as Gerald Armstrong
3 ("Armstrong"). (Ex. F, Declaration of Laurie J. Bartilson,
4 para. 3.) When queried as to his presence there, Armstrong
5 stated that he was "helping out." (Id.) Additional papers
6 were late-filed with the Court by Greene on August 23, and not
7 surprisingly, Armstrong's presence at Greene's office continued
8 after the August 19 filings for several more days. (Ex. D,
9 Declaration of Sam Brown, para. 3.)

10 Armstrong has recently been identified as a paralegal
11 hired by Yanny to work with him on this case. Yanny
12 represented in argument to Los Angeles Superior Court that he
13 had "hired Armstrong as a paralegal to help [him] on the
14 Aznaran case." (Ex. G, Reporter's Transcript of August 6,
15 1991, at 25.) Armstrong confirmed this characterization, as did
16 Yanny in a declaration. (Ex. B, Declaration of Joseph A.
17 Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald
18 Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's
19 paralegal on this case, his new affiliation as an assistant to
20 Ford Greene is truly outrageous. Not only has Yanny been
21 disqualified point blank by the Court from representing the
22 Aznarans, he has also been forbidden from directly or
23 indirectly acting as counsel against defendants on behalf of
24 the Aznarans or Gerald Armstrong by preliminary injunction
25 entered on August 6 at the hearing in which the statement was
26 proffered that Armstrong was his paralegal on this case.
27 Religious Technology Center, et al. v. Yanny, et al.,
28 Case No. BC 033035. (Ex. G, Transcript of August 6, 1991, at

1 3-4.)

2 This Court disqualified attorney Barry Van Sickle from
3 representing plaintiffs as being "an extension of Joseph
4 Yanny's continuing involvement in the instant action." (slip.
5 op. September 6, 1988). Here again, Yanny's involvement in
6 this case continues, this time through a different "extension"
7 -- the improper activities of Yanny's paralegal, Gerald
8 Armstrong, whose actions are just as improper as they would be
9 if done by a lawyer. In re Complex Asbestos Litigation 91
10 D.A.R. 8849 (1991).

11 That Armstrong is amenable to the kind of covert
12 representation in which Yanny is engaging in this case is
13 highlighted by his recorded remarks made in November 1984. At
14 that time, Armstrong was plotting against the Scientology
15 Churches and seeking out staff members in the Church who would
16 be willing to assist him in overthrowing Church leadership. The
17 Church obtained information about Armstrong's plans and,
18 through a police-sanctioned investigation, provided Armstrong
19 with the "defectors" he sought. On November 30, 1984, Armstrong
20 met with one Michael Rinder, an individual whom Armstrong
21 thought to be one of his "agents" (but who in reality was loyal
22 to the Church). In the conversation, recorded with written
23 permission from law enforcement, Armstrong stated the following
24 in response to questions by Mr. Rinder as to whether they had
25 to have actual evidence of wrongdoing to make allegations
26 in Court against the Church leadership:

27 ARMSTRONG: They can allege it. They can allege
28 it. They don't even have -- they can allege it.

1 RINDER: So they don't even have to -- like -- they
2 don't have to have the document sitting in front
3 of them and then --

4 ARMSTRONG: Fucking say the organization destroys
5 the documents.

6 * * *

7 Where are the -- we don't have to prove a goddamn
8 thing. We don't have to prove shit; we just have
9 to allege it.

10 (Ex. E, Declaration of Lynn R. Farny, para. 6.) With such
11 a criminal attitude, Armstrong fits perfectly into Yanny's game
12 plan for the Aznaran case.

13 It is apparent that Yanny's disqualification from this
14 case has simply driven him back underground. He challenged the
15 Court by appearing directly in this case and lost. So he now
16 sends his paralegals to aid Greene in his prosecution of the
17 case, thereby doing indirectly what this Court and the Los
18 Angeles Superior Court have forbidden him to do at all. Greene
19 and the Aznarans are obviously aware that the Court
20 disqualified Yanny and ruled his participation in this case to
21 be "highly prejudicial to Defendants" because of Yanny's former
22 representation of defendants. This was the same order which
23 removed Yanny and put Greene back into the case as plaintiffs'
24 counsel. Thus, the Aznarans, their former attorney and their
25 present attorney are equally culpable for permitting Yanny to
26 continue his participation in this case to the adjudicated

27 ///

28 ///

001416

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and) CASE No. CV 88-1786 JMI(Ex)
RICHARD N. AZNARAN,)
Plaintiffs,) DEFENDANTS' OPPOSITION TO EX PARTE
v.) APPLICATION TO FILE PLAINTIFFS'
CHURCH OF SCIENTOLOGY OF) GENUINE STATEMENT OF ISSUES [SIC]
CALIFORNIA, et al.,) RE DEFENDANTS' MOTIONS (1) TO EXCLUDE
Defendants.) EXPERT TESTIMONY; AND (2) FOR
AND RELATED COUNTERCLAIMS) SEPARATE TRIAL ON ISSUES OF
RELEASES AND WAIVERS; REQUEST THAT
OPPOSITIONS BE STRICKEN
DATE: To be determined
TIME: To be determined
COURTROOM: Hon. James M. Ideman

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1 Defendants oppose plaintiffs' Ex Parte Application to
2 File Plaintiffs' Oppositions to Defendants' Motion to Exclude
3 Expert Testimony and For Separate Trial on Issues of Releases
4 and Waivers, and request that these late-filed papers be
5 stricken.

6 In defendants' notice of plaintiffs' non-compliance with
7 mandatory pretrial procedures, filed and served on August 9,
8 1991, defendants demonstrated that, throughout this litigation,
9 plaintiffs have engaged in an "unswerving pattern of
10 non-compliance and campaign of delay." [Notice of Non-Compliance
11 at 3]. Defendants therein documented for the Court a pattern by
12 plaintiffs and their counsel of late filings, no filings,
13 incomplete filings, filings that did not comply with the Federal
14 Rules and filings that did not comply with the Local Rules,
15 and the utilization of defendants' former counsel and lawyers
16 associated with defendants' former counsel. Despite the
17 pendency of that Notice, plaintiffs have, yet again, repeated
18 the same contempt for this Court's orders and procedures which
19 they have demonstrated throughout.

20 This Court has already made it clear to plaintiffs that
21 their oppositions to the pending motions were due for filing no
22 later than August 19, 1991. In just this single week,
23 plaintiffs violated this Court's orders and the Local Rules by:

24 (1) Filing oversized oppositions to defendants'
25 two summary judgment motions. These oppositions
26 were numerated to be 40 and 50 pages in length, but
27 were accompanied by a 53-page "Appendix of Fact,"
28

1 thus making the actual size of the two opposition
2 papers 93 and 103 pages;^{1/}

3 (2) Failing to file Statements of Genuine
4 Issues of Fact with their memoranda opposing the
5 summary judgment motions;

6 (3) Attempting to late-file Statements of
7 Genuine Issues of Fact on Friday, August 23, 1991,
8 giving defendants no opportunity to respond to
9 those Statements with defendants' replies, due to
10 be filed on Monday, August 26, 1991;

11 (4) Failing to oppose in a timely fashion four
12 other pending motions;

13 (5) Failing to file a Pretrial Conference
14 Memorandum of Contentions of Fact and Law, due with
15 the Court on August 26, 1991 pursuant to Local Rule
16 9.5; and

17 (6) Preparing all of those papers with the
18 aid of one Gerald Armstrong, who was hired by
19 Joseph Yanny to act as Yanny's paralegal on
20 this very case. [Ex. A, Declaration of Laurie J.
21 Bartilson; Ex. B, Transcript of Hearing of August
22 6, 1991 in Religious Technology Center v.

23
24 1. The Court is reminded that defendants attempted to file
25 moving papers in support of one of the motions at issue that
26 was 103 pages in length, and their ex parte request for
27 permission to do so was denied. That memorandum of points and
28 authorities was accordingly reduced to 49 pages. Had
plaintiffs sought to file a comparably-sized memorandum, no
opposition would have been lodged by defendants. However,
defendants do object to the 93- and 103-page memoranda
submitted by plaintiffs via subterfuge.

1 Yanny, IASC Case No. BC 033035, p. 25].

2 Plaintiffs now seek leave to late-file oppositions to two
3 of the motions which they have failed to oppose. They ask to do
4 so on the very day that defendants' replies to those oppositions
5 would be due for filing with the Court, and on a date only 21
6 days before the scheduled pretrial conference. Plaintiffs,
7 however, can demonstrate no good cause why they continue to
8 refuse to abide by this Court's specific orders and the Local
9 Rules. As such, their ex parte application must be denied,
10 and the lodged oppositions ordered stricken.

11 The burden is on the moving party to demonstrate good
12 cause if he seeks to have more time in which to file papers.
13 Local Rule 1.18. Here, plaintiffs already requested more time,
14 and were granted until August 19, 1991 by this Court. Their
15 request to have until August 26, 1991 to file these very
16 papers was already denied by the Court on August 9, 1991.

17 The moving party is required to present his reasons for
18 seeking the ex parte application, and a memorandum of points
19 and authorities in support thereof. Plaintiffs have done
20 neither. Instead, they offer a declaration of their counsel,
21 which states merely that he and his new co-counsel require more
22 time than the Court was previously willing to give them in order
23 to respond to defendants' motions. Plaintiffs' counsel does
24 not inform the Court, however, that in the preparation of these
25 and other papers, he has been aided by none other than Gerald
26 Armstrong. [Ex. A, Declaration of Laurie J. Bartilson]. Arm-
27 strong is employed by Joseph Yanny as a paralegal on this very
28

1 case. [Ex. B, p. 25]. For him to now have switched his aid
2 to Greene's office further taints all of the papers filed by
3 Greene, and is grounds for disqualification of Greene himself as
4 well. See, In re Complex Asbestos Litigation (1991) 91
5 D.A.R. 8849 (Requiring disqualification of plaintiff's law firm
6 for the hiring of a paralegal formerly employed by defendant's
7 lawyers). Greene's complaint that he has been unable to follow
8 this Court's orders, even with the improper aid of Gerald
9 Armstrong, is thus a completely hollow argument. It is plain
10 that plaintiffs and their counsel have nothing but contempt for
11 this Court, its Rules and its Orders.

12 This is merely the latest episode in plaintiffs'
13 "persistent pattern of abusive conduct," Chism v. National
14 Heritage Life Ins. Company, 637 F.2d 1328, 1331 (9th Cir.
15 1981), which defendants and the Court have tried in vain to
16 cure. The schedule set by the Court was clear and concise,
17 plainly designed to permit the Court to rule on pending matters
18 prior to the Pretrial Conference, now set for September 16,
19 1991. Plaintiffs' refusal to comply with this clear order, and
20 instead late-file oppositions willy-nilly, is inexcusable.
21 The language of the Ninth Circuit in dealing with a similar case
22 which arose in this very district is hauntingly appropriate:

23 Chism or his attorneys continually flouted
24 discovery rules, failed to comply with pretrial
25 conference obligations, and repeatedly violated the
26 local rules of court.^{2/} This conduct continued even

27 2. Defendants pointed out in the Notice on August 9, 1991,
28 that plaintiffs' counsel refused to attend the 40-day meeting
of counsel mandated by Local Rule 9.4, which is critical to a
(footnote continued)

1 DECLARATION OF LAURIE J. BARTILSON

2 I, LAURIE J. BARTILSON, hereby declare and state:

3 1. I am co-counsel of record for plaintiffs in the
4 case of Aznaran v. Church of Scientology of California,
5 et al., Case No. CV 88-1786 JMI(Ex). I have personal
6 knowledge of the matters set forth herein and, if called upon
7 to do so, could and would competently testify thereto.

8 2. On August 19, 1991, I called the offices of Ford
9 Greene, counsel for plaintiffs in this case, to arrange to have
10 a courier pick up several oppositions which plaintiffs were due
11 to file that day.

12 3. The person who answered the telephone in Mr. Greene's
13 office identified himself as Gerald Armstrong. When queried,
14 Armstrong stated that he was at Greene's office "helping out."
15 I know Armstrong, as I attended his deposition in another case
16 in which I am also counsel. He is a long-term litigation
17 adversary of my client, Church of Scientology of California,
18 having been sued for conversion of documents belonging to the
19 Church's Founder.

20 4. I have been informed by private investigators hired by
21 my law firm that Armstrong was present at Ford Greene's offices
22 many times from August 3, 1991 through at least August 21, 1991,
23 often for hours and days at a time. When my courier went to
24 Greene's offices on August 19, 1991 to pick up papers in this
25 case, he observed Armstrong sleeping on the floor in the office.

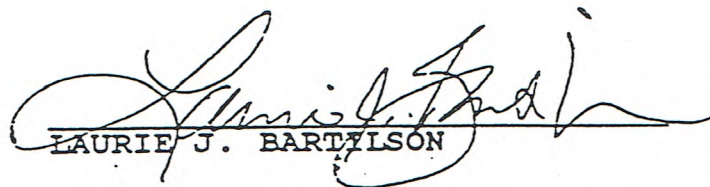
26 5. Exhibit 1 to the Reply in Support of Defendants'
27 Motion for Summary Judgment is a true and correct copy of
28 a transcript of an August 6, 1991 hearing in the case of

1 Religious Technology Center, et al. v. Yanny, Case No. BC

2 033035. In that case, Yanny was preliminarily enjoined by the
3 Court from representing either the Azarans or Armstrong.

4 I declare under the penalties of perjury under the laws of
5 California and the United States of America that the foregoing
6 is true and correct.

7 Executed this 27th day of August at Los Angeles,
8 California.

9
10 
11 LAURIE J. BARTYLSON
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10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13

14 BENT CORYDON,	)	CASE NO. C 694 401
)	
15 Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION OF DEFENDANT AUTHOR
16 vs.	)	SERVICES, INC. TO DELAY OR
	)	PREVENT THE TAKING OF
17 CHURCH OF SCIENTOLOGY	)	CERTAIN THIRD PARTY
18 INTERNATIONAL, INC.,	)	DEPOSITIONS BY PLAINTIFF;
etc. et al.,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES; DECLARATIONS
19 Defendants.	)	OF LAWRENCE E. HELLER AND
	)	HOWARD SCHOMER IN
	)	SUPPORT THEREOF
20)	
21)	
22)	
23)	
24)	
25)	
26)	
27)	
28)	

AND RELATED CROSS-ACTIONS

DATE: November 16, 1989
TIME: 9:00 a.m.
DEPT: 44

TO: PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN.

PLEASE TAKE NOTICE that on November 16, 1989 at 9:00 a.m.,
or as soon thereafter as counsel can be heard, in Department 44
of the above-entitled Court located at 111 North Hill Street,
Los Angeles, California, defendant AUTHOR SERVICES, INC.
("defendant ASI" hereinafter) will move the Court for an order
to restrain plaintiff from taking certain third party
depositions.

001426

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1 This application is made on the ground that great and
2 irreparable harm will result to defendant ASI unless a
3 restraining order is issued enjoining plaintiff from taking
4 certain third party depositions, or conditioning those
5 depositions upon a showing of relevance.

6 This Motion will be based upon this Notice, the attached
7 Memorandum of Points and Authorities, the pleadings, records and
8 files in this action, and such evidence as may be presented at
9 the hearing of the Motion.

10 Dated: October 7th, 1989

11 TURNER, GERSTENFELD, WILK & TIGERMAN

12
13 BY:

Lawrence E. Heller
Attorneys for Defendants
AUTHOR SERVICES, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

Approximately two and one-half (2-1/2) years ago various Scientology entities, including some of the defendants herein, settled over a dozen cases involving hundreds of millions of dollars in alleged damages. Between six (6) to ten (10) of those cases were pending in this court and the Federal Court of the Central District of California.

One such case, which was not settled, entitled Wollersheim v. Church of Scientology of California, Case No. S011790 was intensely litigated in this very Court for close to six (6) years. That case culminated in a trial which lasted approximately eight (8) months, tying up one of this Court's courtrooms and judges exclusively for that period of time. During the course of the Wollersheim litigation, various issues were appealed, in one such instance resulting in a six (6) to eight (8) month stay of that litigation issued by the Honorable Sandra Day O'Connor, Justice of the United States Supreme Court. The Wollersheim litigation has recently been partly affirmed and partly reversed by the California Court of Appeals, and all parties expect that the appellate process will continue for at least another two (2) years.

Recognizing the tremendous time and financial burdens which litigation of this nature placed not only upon the litigants and their attorneys, but the courts involved as well, over a half dozen attorneys, including various California attorneys, entered into what can only be characterized as "herculean" settlement efforts. Those efforts ultimately resulted in the settlement of

1 virtually all of the "Wollersheim-like" cases (where former
2 Scientology staff members or parishioners instituted litigation
3 against Scientology). Those settlements alleviated the truly
4 gargantuan time and financial resources which would have been
5 wasted in the absence of such a settlement. To effect these
6 settlements also required an exercise of good faith on behalf of
7 adverse litigants and attorneys who had been fiercely battling
8 for a number of years prior to entering into the settlements.

9 One of the key ingredients to completing these settlements,
10 insisted upon by all parties involved, was strict
11 confidentiality respecting: (1) the Scientology parishioner or
12 staff member's experiences within the Church of Scientology; (2)
13 any knowledge possessed by the Scientology entities concerning
14 those staff members or parishioners; and (3) the terms and
15 conditions of the settlements themselves. Peace has reigned
16 since the time the interested parties entered into the
17 settlements, all parties having exercised good faith in carrying
18 out the terms of the settlement, including the obligations of
19 confidentiality.

20 Comes now the plaintiff herein, BENT CORYDON, and acting
21 the role of a one man wrecking crew, he serves multiple
22 subpoenas in a wholesale manner upon these former plaintiffs
23 (and in some cases defendants); seeking material totally
24 irrelevant to the issues involved in his litigation.

25 Without any question, CORYDON's intent in serving these
26 various subpoenas requesting depositions and the production of
27 documents is to drive a wedge between these settling parties, in
28 an illegal attempt to extort a settlement of his own from the

1 defendants herein. Even a glance at the Request for Documents
2 served as part of CORYDON's subpoena duces tecum re deposition
3 upon these settling parties indicates that he has no interest in
4 any issues respecting plaintiff's case. Rather, CORYDON appears
5 to be on a mission to torpedo what can only be characterized as
6 good faith, effective settlements which have alleviated a vast
7 burden upon this Court. (See subpoena served upon one Homer
8 Schomer, an individual who had sued various Scientology entities
9 and this moving defendant in the Federal Court of the Central
10 District of California, attached hereto as Exhibit "A").

11 Attached to these moving papers is the declaration of one
12 of the litigants who settled against Scientology, the aforesaid
13 Homer Schomer. Mr. Schomer's declaration, conclusively exhibits
14 that he has no evidence concerning CORYDON or CORYDON's
15 relationship with any Scientology entity, is perhaps the best
16 evidence of CORYDON's bad faith in attempting to effect the
17 subject deposition discovery.

18 The other third parties CORYDON has subpoenaed to deposition
19 that ASI knows of have even less information concerning CORYDON.
20 For instance one of the potential deponents who CORYDON has been
21 trying to serve is attorney Michael J. Flynn, a Boston lawyer
22 involved in most of the settlements which transpired some two
23 and one-half (2-1/2) years ago.

24 ///

25
26 ¹Even a cursory review of the documents requested in Mr.
27 Schomer's subpoena indicate that they have nothing to do with Mr.
28 CORYDON's case. They relate solely to the Settlement Agreement
and documents attendant to that settlement. It is inconceivable
that any of these documents could be relevant, even pursuant to
discovery standards, to any issue in the instant litigation.

1 CORYDON and his attorney, Toby L. Plevin, obviously feel
2 that they have hit upon a weak spot within the Church of
3 Scientology's resolve to effectively defend this litigation.
4 Their tactic is to illegally threaten to compel by subpoena
5 disclosure of confidential material irrelevant to the issues in
6 his case. The fact that CORYDON's and Ms. Plevin's litigation
7 tactics are in bad faith and an abuse of this Court's process
8 appears to be of no avail to them.

9 CORYDON has been in litigation with most of the defendants
10 herein for approximately eight (8) years. CORYDON sought
11 dismissal of the litigation which he had previously instituted
12 in the County of Riverside prior to the time that it was to go
13 to trial in that Court, after he had litigated that case for
14 over five (5) years. CORYDON thereafter instituted this
15 litigation, clearly once again with no intent of going to trial
16 on the merits, but rather in an attempt to "blackmail" these
17 defendants through an attack upon the good faith settlements
18 into which they had previously entered.

19 This moving party, (AUTHOR SERVICE, INC.) which was a party
20 to at least one of the aforementioned settlements beseeches this
21 Court to prevent CORYDON and/or his attorney from engaging in
22 these unethical tactics under the guise of free wheeling
23 discovery. These parties would ask this Court to issue a
24 protective order preventing these depositions from going forward

25 ///

26 ///

27 ///

1 at least until CORYDON and his attorney have exhibited the
2 relevance of these depositions.

3 Dated: October 24, 1989

4 TURNER, GERSTENFELD, WILK & TIGERMAN

5
6 BY: 

7 Lawrence E. Heller
8 Attorneys for Defendants
9 AUTHOR SERVICES, INC.
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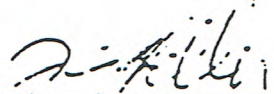
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1 instances, sometimes contentious. However, a "universal
2 settlement" was ultimately entered into between the numerous
3 parties. The universal settlement provided for non-disclosure
4 of all facts underlying the litigation as well as non-disclosure
5 of the terms of the settlements themselves. The non-disclosure
6 obligations were a key part of the settlement agreements
7 insisted upon by all parties involved.

8 4. The contractual non-disclosure provisions were the one
9 issue which was not debated by any of the parties or attorneys
10 involved. In the last two and one half (2-1/2) years the
11 settlements have been carried out in good faith by all parties.
12 I consider my contribution, as well as the contribution of the
13 other attorneys involved in the settlements, to have been of
14 great benefit to this and other Courts in that it alleviated
15 literally months upon months of trial time which would have been
16 necessary had the settlements not been properly effected.

17 I declare under penalty of perjury that the foregoing is
18 true and correct.

19 Executed this 17 day of June 1989, at Beverly Hills,
20 California.

21 
22 Lawrence E. Heller
23 Declarant
24
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001435

EXHIBIT N

1

was ostensibly settled. Para. 4B contains the condition that I "waive any rights [I] may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California."

I have recently become convinced that it would be a fraud upon this court to not advise it that the respondent is prohibited from filing a brief. I am also now convinced that my right to file a respondent's brief is not something that can be taken away by such a settlement agreement.

I have discovered, moreover, that "the failure to file respondent's brief imposes an unnecessary burden on [the] court, and at least raises the inference that respondent concedes that the appeal is meritorious," Sowell v. Sowell, 164 Cal. App. 2d 371, 330 P.2d 391 (1958), Yarbrough v. Yarbrough, 144 Cal. App. 2d 610, 301 P. 2d 426 (1956); that the court "may assume . . . that the respondent has abandoned any attempt to support the judgment, and . . . may also assume that the points made by the appellant are meritorious," Roth v. Keene, 256 Cal. App. 2d 725, 64 Cal. Rptr. 399 (1967); and that the court "shall regard with disfavor the failure of a respondent in any case to assist the court by means of an answering brief," James v. James, 125 Cal. App. 2d, 417, 270 P.2d, 538 (1954).

I am therefore requesting this court's permission to file a respondent's brief, motion for dismissal or other responsive document.

2. Extension of Time to File:

I received Appellants' Brief and Appellants' Supplemental Appendix in Lieu of Clerk's Transcript from Flynn, Sheridan & Tabb on January 18, 1990. I have not yet received Appellants' Appendix.

I am not an attorney and I am not represented by legal counsel in any Scientology matters at this time. Neither Flynn, Sheridan & Tabb nor Contos & Bunch, both of which firms represented me throughout the litigation of

this case in the lower court, will be representing me in this appeal. It is my intention to retain an attorney to represent me in this appeal if at all possible.

Appellants had five and a half years from the date the trial court issued its Decision to the date they filed their brief.

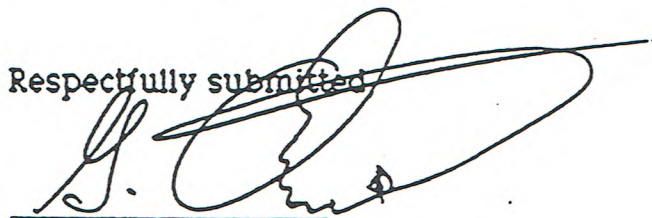
Appellants have filed another appeal, entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant, Bent Corydon, Appellee, Civ. No. B 038975 in Division Four in the Second Appellate District, which has its genesis in the same case underlying this appeal, Super. Ct. No. C420153, and concerns many of the same facts and issues as this appeal. I am at this time also petitioning the Division Four Court for permission to respond in that appeal.

There remain a number of issues springing from the settlement agreement, appellants' actions in violation of the agreement, and appellants' obstructive and threatening use of the agreement, which this court does not have to consider in order to grant my petition, but which I will be addressing as soon as possible by motion or other appropriate action in the Los Angeles Superior Court, which retains, pursuant to clause 20 of the settlement agreement, jurisdiction to enforce its terms.

I therefore request 90 days from the date of this court's granting of this petition in which to file a respondent's brief or other responsive document.

DATED: February 20, 1990

Respectfully submitted

A handwritten signature in black ink, appearing to be "G. Armstrong", written over a horizontal line.

GERALD ARMSTRONG

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 7140 Buckingham Blvd., Berkeley, CA 90475.

On February 20, 1990 I caused to be served the foregoing document described as RESPONDENT'S PETITION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on February 20, 1990 at Oakland, California.

SERVICE LIST

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE
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CLERK OF THE SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

001441

EXHIBIT HH

RECEIVED

NOV 25 1991

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22 RELIGIOUS TECHNOLOGY CENTER

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 FOR THE COUNTY OF LOS ANGELES

25 CHURCH OF SCIENTOLOGY OF)
26 CALIFORNIA, a California)
27 corporation,)

28 Plaintiff,)

29 vs.)

30 GERALD ARMSTRONG; DOES 1)
31 through DOE 10, inclusive,)

32 Defendants.)

33 GERALD ARMSTRONG,)

34 Cross-Complainant,)

35 vs.)

36 CHURCH OF SCIENTOLOGY OF)
37 CALIFORNIA, a California)
38 corporation; L. RON HUBBARD;)
39 and DOES 1 through 100,)
40 inclusive,)

41 Cross-Defendants.)

REPLY IN SUPPORT OF MOTION
TO ENFORCE SETTLEMENT
AGREEMENT; FOR LIQUIDATED
DAMAGES AND TO ENJOIN FUTURE
VIOLATIONS

FILED UNDER SEAL

Date: December 3, 1991
Time: 9:00 a.m.
Dept: 56

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1 I. INTRODUCTION

2 Plaintiff and cross-defendant Church of Scientology of
3 California ("CSC") and cross-defendants Religious Technology
4 Center ("RTC") and Church of Scientology International ("CSI")
5 (collectively, "cross-defendants") file their reply to cross-
6 complainant Gerald Armstrong's ("Armstrong") opposition to the
7 motion to enforce the settlement agreement and for damages and
8 injunction.¹ The key feature of the paper filed by Armstrong is
9 that it is quite strange, and hardly an opposition at all, for
10 two reasons: 1) Armstrong does not refute a single fact set
11 forth in the motion, i.e., he does not deny that he has
12 committed the multiple breaches which provoked the filing of the
13 motion, and 2) Armstrong also does not deny that his activities
14 violate the specific provisions of the settlement agreement
15 cited in the moving papers.

16
17 ¹ It should be noted that timely service of the opposition was
18 not received. Cross-defendants have never agreed to fax service,
19 yet Armstrong only attempted to serve his opposition by fax late
20 on November 18, 1991, and did not succeed in effecting a full
21 transmission. The last ten pages of the memorandum were not
22 received, nor the first four pages of Armstrong's lengthy
23 declaration. The exhibits were also not received. In addition,
24 counsel noted on the opposition is Toby Plevin, who has never
25 entered an appearance on behalf of Armstrong. Ms. Plevin's office
26 is in Santa Monica, yet the fax was sent from the offices of Ford
27 Greene in San Anselmo, California, and another copy was delivered
28 on the 19th from the offices of Cummins & White in Los Angeles.
It is not at all clear who represents Armstrong. Furthermore, the
papers should have been hand served on November 18. And finally,
the papers are typed at 1.5 spaces, which is disfavored by L.A.
Superior Court, Law and Policy Discovery Manual, para. 119. With
the lengthy, single-spaced block quotes as well, this really is an
oversized brief.

Instead of denying his breaches, Armstrong seeks to draw the Court's attention away from those breaches by concocting a defense by maintaining that he was somehow justified in his actions because, he claims, the Church parties have also breached their obligations under the agreement and one provision of the agreement supposedly violates public policy. To support his position, he seeks for the Court to "imply" such a non-disclosure term in the agreement because none explicitly exists. As shown below, Armstrong's argument must fail because the Church parties did not have any non-disclosure obligations such as Armstrong claims they did. In addition, the public policy arguments by Armstrong have been rejected by other courts and are simply invalid. And finally, "the language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." Civil Code § 1638. "The words of a contract are to be understood in their ordinary and popular sense . . ." and meanings which do not appear are not to be implied. Civil Code § 1644.

There is nothing wrong with the agreement at all. It is legal, enforceable, and imposes no reciprocal confidentiality requirements on cross-defendants. The only problem is that it has been breached by Armstrong. He should be sanctioned and damages awarded for his breaches.

II.

ARMSTRONG HAS NEITHER ADDRESSED NOR REFUTED THE CLEAR EVIDENCE OF HIS BREACHES PROVIDED BY CROSS-DEFENDANTS

In the motion, cross-defendants provided evidence that Armstrong had violated paragraphs 10 and 7(G) of the settlement

1 agreement by:

2 1) Providing aid to Richard and Vicki Aznaran ("Aznarans")
3 in their lawsuit against cross-defendants and others, via
4 employment as a paralegal by Joseph Yanny working on that case;

5 2) Aiding Yanny in litigation against counter-defendants by
6 voluntarily filing declarations in his support; and

7 3) Helping Ford Greene, the Aznarans' current lawyer, as a
8 paralegal on the Aznaran case, and by voluntarily providing
9 declarations for filing by Greene in the case.

10 Not one word of Armstrong's opposition is devoted to
11 challenging these proven accusations. This is not surprising, as
12 the motion demonstrates that it is Armstrong's own admissions
13 that are the basis for the allegations. Furthermore, Armstrong
14 also does not deny that these actions are violations of the
15 specific settlement agreement provisions whose enforcement is
16 sought in the motion.

17 III.

18 THE NON-DISCLOSURE PROVISIONS OF THE
19 SETTLEMENT AGREEMENT ARE NOT MUTUAL

20 There is simply no basis for any argument that the
21 confidentiality provisions of the settlement agreement were
22 mutual. As discussed by Armstrong, the settlement agreement was
23 a settlement of Armstrong's cross-complaint only. (Opposition
24 at 1.) In paragraph 1 of the agreement, it states that the
25 agreement is between CSI on one side "and Gerald Armstrong
26 (hereinafter "Plaintiff"), Cross-Complainant . . ." on the
27 other. Thus, throughout the agreement, all references to
28 "Plaintiff" are to Armstrong. Paragraph 7D provides:

1 Plaintiff further agrees that he will maintain strict
2 confidentiality and silence with respect to his
3 experiences with the Church of Scientology, L. Ron
4 Hubbard or any of the organizations, individuals and
5 entities listed in Paragraph 1 above. Plaintiff
6 further agrees that he will maintain strict
7 confidentiality and silence with respect to his
8 experiences with the Church of Scientology and any
9 knowledge or information he may have concerning the
10 Church of Scientology, L. Ron Hubbard, or any of the
11 organizations, individuals and entities listed in
12 Paragraph 1 above. Plaintiff expressly understands
that the non-disclosure provisions of this
subparagraph shall apply, inter alia, but not be
limited, to the contents or substance of his complaint
on file in the action referred to in Paragraph 1
hereinabove or any documents as defined in Appendix
"A" to this Agreement, including but not limited to
any tapes, films, photographs, recastings, variations
or copies of any such materials which concern or
relate to the religion of Scientology, L. Ron Hubbard,
or any of the organizations, individuals, or entities
listed in Paragraph 1 above.

13 (Ex. A to Motion, at 7D.) There can be no possible doubt that
14 all of the obligations set forth in the section quoted from
15 paragraph 7D delineate obligations of Armstrong only.

16 Armstrong argues that "while the language of paragraphs 7 and 10
17 used the word 'Plaintiff,' it is apparent that the provisions
18 set forth therein also applied to 'Scientology,' but that the
19 parties saw no necessity to expressly state such application of
20 said provisions."

21 This contention is without any support in the agreement, is
22 contrary to logic, and utterly nonsensical.² It is

23 ² That Armstrong is willing to take unsupported and outrageous
24 positions, and even to lie when it suits his purposes, is made
25 clera by his own declaration in support of his opposition. The
26 declration contains an outright admission that he committed
27 perjury when he signed an affidavit along with the settlement
28 agreement, as he did not believe what it said, but simply signed
it for the expediency of settling his case. (Armstrong
Declaration, para. 12.) Armstrong is therefore a self-proclaimed
perjurer and his current declaration should be disregarded by the
(continued...)

1 inconceivable that the Church parties would agree not to discuss
2 materials related to the Scientology religion, L. Ron Hubbard or
3 themselves. With respect to paragraph 10, it is also beyond
4 belief that Armstrong could contend that the Church parties
5 intended to agree not to aid anyone in litigation against
6 themselves.

7 Armstrong obviously recognizes that the language of these
8 paragraphs refers to him only, or he would not have resorted to
9 arguments that "implied terms" are to be included as part of a
10 contract in order to turn actions which in no way violated the
11 agreement into breaches thereof. Terms that are not specifically
12 set forth in an agreement may be implied:

13 where it is indispensable to effectuate the intention
14 of the parties, where it is clear from the language
15 used that the provision was so clearly within their
16 contemplation that the parties deemed it unnecessary
17 to express it . . . and where the subject is not
18 completely covered by the contract.

19 Adkins v. Lear, Inc. (1968) 67 Cal.2d 882, 905, 64 Cal. Rptr.
20 545, 559.

21 Far from supporting Armstrong's position, these factors
22 etched in stone the reasons why no additional terms can be
23 implied here. The intention of the parties is clearly expressed
24 throughout the agreement by providing specific obligations of
25 each party. [Mutual Release of All Claims and Settlement
26 Agreement, Ex. A to Motion, at paras. 4a, 4b, 5, 6, 9.] It
27 needs no clarification or implied terms for the intention to be
28 effectuated. There is literally nothing in the language used in

29 ²(...continued)
30 Court.

1 the agreement which gives any impression that a confidentiality
2 obligation on the part of cross-defendants was "so clearly
3 contemplated by the parties that they did not need to express
4 it" or even contemplated at all. Furthermore, the subject
5 matter was fully covered by the agreement. In contrast, in the
6 Adkins case, the court was discussing provisions of a patent
7 licensing agreement and found that certain provisions made no
8 sense if other provisions were not implied, such as a right to
9 cancel defendant's use of plaintiff's patent if the minimum
10 royalty were not paid, but not if much more substantially earned
11 royalties were withheld. Id.

12 Other criteria set forth by Courts of Appeal are no more
13 helpful to Armstrong than those listed in Adkins.³ "Implied
14 covenants can only be justified on grounds of legal necessity."
15 Addiego v. Hill (1966) 238 Cal.App.2d 842, 48 Cal.Rptr. 240,
16 243. No such necessity exists here. In Addiego, the court
17 expressly recognized that the power of courts to imply terms in
18 agreements was subject to strict limitations:

19 We recognize that courts cannot make better agreements
20 for parties than they themselves have been satisfied
21 to enter into or rewrite contracts because they
operate harshly or inequitably. It is not enough to
say that without the proposed implied covenant, the

22 ³ The other citations by Armstrong to support the points he
23 purports to make here are cited entirely out of context or simply
24 do not stand for what he claims. E.g., Amen v. Merced County
25 Title (1962) 58 Cal.2d 528, 532, 25 Cal. Rptr. 65, 67 (case dealt
26 with whether statute of limitations for written or oral contracts
27 applied); California Lettuce Growers v. Union Sugar Co. (1955) 45
28 Cal.2d 474, 289 P.2d 785, 790-792 (court was determining whether
a price term could be implied based on custom and usage); Mercer
v. Lemmens (1964) 230 Cal.App.2d 167, 171, 40 Cal.Rptr. 803, 805
(language referring to "adjoining" 50 foot lot implied a
particular lot because there was no other such lot owned by the
seller).

1 contract would be improvident or unwise or would
2 operate unjustly. Parties have the right to make such
3 agreements. The law refuses to read into contracts
4 anything by way of implication except upon grounds of
5 obvious necessity.

6 (Emphasis added.)

7 There is no necessity whatsoever in this case to read
8 anything into the settlement agreement. Paragraph 3 of the
9 settlement agreement recites that Armstrong received a monetary
10 consideration with which he was "completely satisfied." (Ex. A
11 to Motion, para. 3.) For his part, Armstrong released cross-
12 defendants and certain others from any and all claims, and also
13 dismissed the pending lawsuit. (*Id.*, para. 4.) Armstrong also
14 acknowledged, in succeeding paragraphs of the agreement, as
15 referenced above, other obligations of confidentiality, return
16 of documents, non-assistance of parties adverse to cross-
17 defendants and similar provisions. He further acknowledged that
18 he had entered into the Agreement "freely, voluntarily,
19 knowingly and willingly, without any threats, intimidation or
20 pressure of any kind whatsoever . . ." (*Id.*, para. 11B), as well
21 as the fact that he had read the agreement and understood its
22 contents. (*Id.*, para. 11C.) In such a situation,

23 There cannot be a valid, express contract and an
24 implied contract, each embracing the same subject
25 matter, existing at the same time. . . . The reason
26 for the rule is simply that where the parties have
27 freely, fairly and voluntarily bargained for certain
28 benefits in exchange for undertaking certain
obligations, it would be inequitable to imply a
different liability and to withdraw from one party
benefits for which he has bargained and to which he
is entitled.

26 Wal-Noon Corp. v. Hill (1975) 45 Cal.App.3d 605, 613, 119 Cal.
27 Rptr. 646, 650-651. Therefore, because the conclusions urged by
28

1 Armstrong may not be reached by the court without implying a
2 different liability than that bargained for, the court may not
3 reach such conclusions.

4 The contention by Armstrong that confidentiality must be a
5 reciprocal obligation of both parties has no basis in practice
6 or in law. There is no requirement that contractual obligations
7 be symmetrical. If someone contracts to have a house built by a
8 contractor, he is not required to build the contractor a house
9 in return. The consideration is his payment of money to the
10 contractor. If someone agrees to maintain confidential the
11 trade secrets of his employer, the consideration may be his
12 continued employment and receipt of salary, and it may also be
13 that he will not have to pay damages for breach of the promise
14 as long as he maintains the promise. A term cannot be read into
15 the contract by which the employer agrees to keep information
16 about the employee confidential merely because he is required to
17 keep confidences about the employer.

18 Applying this principle here, Armstrong was paid
19 substantial financial consideration for entering into the
20 agreement. That was the consideration furnished to him. His
21 return consideration was the various promises he made in the
22 agreement. No mutuality of identical obligations can possibly
23 be implied as it is not required, nor is it logical. As there
24 were no mutual obligations, the rest of Armstrong's arguments
25 directed to claimed breaches of illusory reciprocal obligations
26 by cross-defendants are entirely irrelevant. Because cross-
27 defendants had no duty to maintain confidentiality of anything,
28 they could not have breached that duty by any actions which they

1 allegedly took.

2 IV.

3 THE AGREEMENT IS LEGAL AND DOES NOT VIOLATE PUBLIC POLICY

4 In a final, desperate attempt to excuse his actions,
5 Armstrong argues that one portion of the agreement violates
6 public policy.⁴ However, Armstrong's public policy arguments
7 have been rejected by other courts and for good reason. There
8 is absolutely nothing illegal about agreeing to settle a case
9 upon certain terms, including non-disclosure of private facts,
10 and then accepting money as consideration for those promises.

11 Contrary to the representations by Armstrong, he made no
12 agreement to suppress evidence. The agreement specifically made
13 him subject to all lawful process and in no way prohibited him
14 from providing testimony if subpoenaed or otherwise lawfully
15 commanded to appear. Armstrong himself admits this to be so.
16 (Opposition at 3.)

17 Armstrong settled hotly contested litigation, in which he
18 had been represented by counsel, freely and voluntarily and with
19 full representation as to the settlement as well, for
20 substantial monetary consideration. He admits to being fully
21 represented in his declaration; indeed, paragraph 7 details his
22 engagement of Michael Flynn to represent him in 1982, and
23 paragraphs 13-17 detail Armstrong's communications with his
24 attorney, his reaction to his attorney's advice, and his

25 ⁴ As discussed herein, there is no validity to Armstrong's
26 arguments regarding the non-disclosure provision. However, even
27 if there were such a provision, the severability clause, paragraph
28 16 of the agreement, would still render all the remaining
sections, including the requirement of not aiding adverse
litigants, enforceable.

1 decision to sign the settlement agreement. Armstrong was not
2 counseled regarding the settlement by cross-defendants or their
3 attorneys, but by his own attorney.⁵ (Ex. A, Declaration of
4 Lawrence E. Heller, para. 4.)

5 At the signing of the agreement, both Armstrong and his
6 counsel clearly understood the terms of the agreement. (Id.,
7 para. 5.) A key point regarding the content of the agreement is
8 that the failure to have reciprocal confidentiality and non-
9 disclosure agreements with Armstrong was intentional, and he and
10 his attorney were aware of this fact. Armstrong, to a high
11 degree, had engaged in attacks on the Scientology religion and
12 furnished aid to litigants in other matters against Scientology
13 parties. Cross-defendants could never be certain where one of
14 his prior declarations or statements might surface and they
15 would need to be able to counter it. Therefore, there was no
16 possible way they would have agreed to a non-disclosure
17 provision binding them, and this fact was well-known to
18 Armstrong and counsel. (Ex. A, Declaration of Lawrence E.
19 Heller, para. 5.) The fact that this concern was quite real is
20 evidenced by Armstrong's opposition. Each of the instances
21 where Armstrong claims that information about him was
22 disseminated to others was a situation in which harangues by him
23 against the cross-defendants or other Scientology churches were

24
25 ⁵ If Armstrong believed that his attorney advised him poorly, he
26 may have had a remedy against his attorney, but not against cross-
27 defendants who have provided him with the benefit of the bargain
28 which he did make. He accepted the consideration and freely used
it, and cannot now complain five years later that he really did
not agree with the terms of what he signed.

1 being used somewhere, and it was necessary for correct
2 information to be provided in order to present a true picture.
3 To do so was entirely in keeping with the intent of the parties
4 in the settlement to put an end to all past conflicts and get on
5 with life. If these attacks by Armstrong could continually
6 resurface to prevent that from occurring, this intent could
7 never come to fruition. (Ex. A, Declaration of Lawrence E.
8 Heller, para. 6.)

9 A videotape was made of the signing by Armstrong, which
10 shows that Armstrong was obviously relaxed and happy and joking
11 about his unusual signature. He manifested no reservations
12 about the signing, and in questioning by cross-defendants'
13 attorney, he acknowledged that: 1) his attorney had explained
14 the legal and factual ramifications of the documents to him; 2)
15 he understood what he was signing and had no questions about it;
16 3) he knew it was a settlement of litigation with all of his
17 attorneys' clients involved in similar litigation at the same
18 time; 4) he had read and comprehensively reviewed the documents;
19 and 5) he was not suffering any duress or coercion in connection
20 with signing them. A copy of the videotape is attached as
21 Exhibit B, in case the court would like to staisfy itself that
22 there was no coercion involved.

23 Armstrong's citations which claim that such settlement
24 provisions are contrary to public policy are misrepresentations
25 of that case law. Williamson v. Superior Court (1978) 21 Cal.3d
26 829, 836, 148 Cal.Rptr. 39, 43-44, dealt with a situation where
27 a party got a co-defendant to withhold damaging testimony of its
28 expert by indemnifying the co-defendant for any judgment it

1 might incur. This agreement between two adversarial co-
2 defendants to suppress specific evidence known to be relevant to
3 the case in order to prevent the plaintiff from recovering was
4 found by the court to violate public policy. Id. at 837, 148
5 Cal.Rptr. at 44. The court referred to the sections of the
6 penal code which deal with bribing or preventing someone from
7 attending a trial to place their actions in perspective. Id.
8 fn.3.

9 In Allen v. Jordanos, Inc. (1975) 52 Cal.App.3d 160, 165,
10 125 Cal.Rptr. 31, 34, the court found an agreement illegal which
11 called for withholding of information from a government
12 agency.⁶ There is nothing in Armstrong's agreement which
13 requires such withholding of information.⁷ In fact, lawful
14 process is a specific exception to non-disclosure requirements.
15 What is prohibited is volunteering of information and agitating
16 trouble, not providing information where it is legally required.

17 ⁶In Allen, a major term of the agreement in question involved the
18 employer agreeing not to provide truthful information that the
19 employee was being terminated for theft and dishonesty to enable
20 the employee to collect unemployment benefits to which he would
not otherwise be entitled, in exchange for the employee's
agreement not to seek arbitration of the charges. Allen v.
Jordanos, Inc. 52 Cal.App.3d at 165, 125 Cal.Rptr. at 33.

21 ⁷ The argument that agreements not to disclose discreditable
22 facts are illegal is not helpful to the Court. First of all,
23 Armstrong's agreement has no such language, and he is not
24 prevented from providing testimony, whether discreditable or
25 otherwise. Second, while Brown v. Freese (1938) 28 Cal.App.2d
26 608, 618, 83 P.2d 82, 87, does quote language stating that "a
27 bargain that has for its consideration the nondisclosure of
discreditable facts . . . is illegal," the statement does not even
28 that it is treating the contract in question as legal, and then
proceeds to find it unenforceable because it contains terms which
are vague and uncertain. Id. Such a weak statement from a 1938
case cannot be deemed precedent.

1 In the cases cited by Armstrong, there was specific evidence
2 needed in connection with a trial or a government investigation
3 of entitlement to benefits which someone had agreed not to
4 divulge under any circumstances. Such agreements were found by
5 those courts to be illegal. In contrast, the agreement here
6 specifically recognizes that Armstrong will provide evidence
7 when called upon to do so by legal process in connection with
8 any matter. Such agreements have been upheld by courts as
9 legal, where a party agreed not to voluntarily testify, but
10 testimony pursuant to subpoena was specifically excepted from
11 the agreement. Hoffman v. United Telecommunications, Inc.
12 (D.Kan. 1988) 687 F.Supp. 1512. Even prior to signing the
13 agreement, Armstrong was not required to voluntarily furnish
14 testimony for anyone. Furthermore, there is no claim by
15 Armstrong that particular information he had was suppressed as
16 evidence for some specific proceeding. There is simply no
17 similarity between Armstrong's situation and the very specific
18 cases he cites. The agreement into which Armstrong entered is
19 not illegal, not contrary to public policy, and is enforceable,
20 pursuant to the public policy to encourage settlements. Phelps
21 v. Kozakar (1983) 146 Cal.App.3d 1078,1082, 194 Cal. Rptr. 872,
22 874.

23 As briefed in the motion, two recent decisions have either
24 directly or implicitly upheld similar provisions in agreements
25 entered into with other individuals with whom CSC and other
26 Church corporations settled in 1986 in a different settlement
27 from the one in which Armstrong was involved. Wakefield v.
28 Church of Scientology of California (11th Cir. 1991) 938 F.2d

1 1226 (Slip Op., Ex. R to Motion, at 4626, 4628, 4630)
2 (settlement terms requiring confidentiality upheld by district
3 court and criminal contempt citation recommended by magistrate
4 judge for violations thereof discussed with approval by 11th
5 Circuit); McLean v. Church of Scientology of California (11th
6 Cir. 1991) (Slip Op., Ex. S to Motion, at 2, 3, 6) (permanent
7 injunction against Nan McLean by district court for violating,
8 inter alia, confidentiality provisions of settlement agreement
9 upheld by Court of Appeals). These cases provide strong support
10 for the proposition that the agreement should be enforced.

11 V.

12 DAMAGES AND AN INJUNCTION SHOULD BOTH BE GRANTED

13 As amply proven above, cross-defendants have not breached
14 any term of the settlement agreement. It is Armstrong whose aid
15 to other litigants against cross-defendants has directly and
16 specifically violated terms binding him which he entered into of
17 his own free will, with advice of counsel, and from which he
18 reaped the abundant consideration provided by cross-defendants.
19 None of Armstrong's attempts to divert the Court's attention
20 from these simple facts should be countenanced. As discussed in
21 the motion, liquidated damages are properly payable by Armstrong
22 for the breaches which have already occurred, and an injunction
23 is proper to prevent further breaches in the future.

24 VI.

25 CONCLUSION

26 Armstrong's settlement agreement is valid, binding, legal,
27 and in conformity with public policy. By his own admissions,
28 Armstrong has committed direct violations of the terms which he

1 claimed to understand and willingly endorse when he signed the
2 agreement. There is no provision of contract law which
3 nullifies any of Armstrong's obligations or permits him to
4 unilaterally revise an agreement, having accepted the benefits
5 on his side. The court is not empowered to add terms to an
6 agreement that were not intended by the parties. Armstrong has
7 no way to escape being sanctioned for his violations. The
8 liquidated damages sought should be awarded and preliminary and
9 permanent injunctions imposed preventing further such violations
10 in the future.

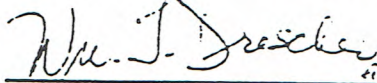
11 Dated: November 22, 1991

Respectfully submitted,

12 Eric M. Lieberman
13 RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.

14 Kendrick L. Moxon
15 Laurie J. Bartilson
BOWLES & MOXON

16 Attorneys for Plaintiff/
17 Cross-Defendant CHURCH OF
18 SCIENTOLOGY OF CALIFORNIA
and Cross-Defendant CHURCH OF
SCIENTOLOGY INTERNATIONAL

19 
20 WILLIAM T. DRESCHER

21 Attorney for Cross-Defendant
22 RELIGIOUS TECHNOLOGY CENTER
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1 Flynn and was not counseled regarding the settlement by cross-
2 defendants or their attorneys.

3 5. At the signing of the agreement, I had a videotape
4 done to memorialize what was occurring. I also asked
5 Armstrong specific questions regarding his understanding of
6 the settlement and of the conditions under which he was
7 signing the agreement. The videotape, which is attached
8 hereto as Exhibit B, is a true depiction of what occurred.
9 Armstrong was relaxed and happy and joked about his unusual
10 signature. He manifested no reservations about the signing
11 whatsoever. He also acknowledged that: 1) his attorney had
12 explained the legal and factual ramifications of the documents
13 to him; 2) he understood what he was signing and had no
14 questions about it; 3) he knew it was a settlement of
15 litigation with all of his attorneys' clients involved in
16 similar litigation at the same time; 4) he had read and
17 comprehensively reviewed the documents; and 5) he was not
18 suffering any duress or coercion in connection with signing
19 them.

20 6. During the negotiations there was discussion of non-
21 disclosure provisions on the part of both sides. It was
22 explained to Armstrong's counsel that the terms could not
23 include a non-disclosure provision by the Church parties as to
24 Armstrong. The reason for this provision not being possible
25 was that Armstrong would walk away from the settlement with
26 the money he received and not have any future problems, but
27 the Church parties would still be left with the prior
28 declarations and other statements provided by Armstrong to

1 parties hostile to the Church. There was no way to know when
2 and where his prior statements might surface in the future.
3 The Church parties therefore needed to be able to use the
4 information they had regarding Armstrong, to be able to rebut
5 Armstrong's earlier statements. For that reason, no non-
6 disclosure obligation of the Church parties with respect to
7 Armstrong was included in the agreement.

8 I declare under penalty of perjury that the foregoing is
9 true and correct.

10 Executed at Beverly Hills, California, this 22nd day of
11 November 1991.

12 Lawrence E. Heller
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On November 22, 1991, I caused to be served the foregoing document described as REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT; FOR LIQUIDATED DAMAGES AND TO ENJOIN FUTURE VIOLATIONS FILED UNDER SEAL on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, CA 94960

Toby L. Plevin
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on November 22, 1991, at Hollywood, California.

Helena K. Lobrin

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EXHIBIT 11

1 TOBY L. PLEVIN
2 ATTORNEY AT LAW
3 10700 SANTA MONICA BLVD, SUITE 4300
4 LOS ANGELES, CALIFORNIA 90025
5 (213) 788-8660

6 Attorney for Defendant/Cross-Complainant
7 Gerald Armstrong

RECEIVED

DEC 18 1991

HUB LAW OFFICES

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 CHURCH OF SCIENTOLOGY OF
12 CALIFORNIA

13 Plaintiff,

14 vs.

15 GERALD ARMSTRONG

16 Defendant.

) CASE NO. C 420153

) SUPPLEMENTAL OPPOSITION OF
) GERALD ARMSTRONG TO MOTION TO
) ENFORCE SETTLEMENT AGREEMENT;
) DECLARATION OF TOBY L. PLEVIN

) [LACK OF JURISDICTION TO
) ENTERTAIN THIS MOTION]

) Date: December 23, 1991

) Time: 9:00 a.m.

) Dept: 56

17
18 MARY SUE HUBBARD

19 Intervenor.

) Discovery: None

) Motion: None

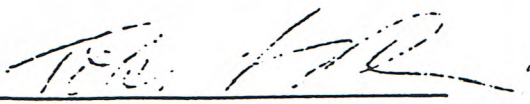
) Trial: None

20
21 TO THE COURT AND ALL COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE THAT GERALD ARMSTRONG REQUESTS THAT THE COURT
23 accept and consider this Supplemental Opposition to the Motion to
24 Enforce Settlement Agreement on the ground that the court does
25 not have subject matter jurisdiction to enforce the settlement
26 under C.C.P. Section 127.4 as maintained by the moving parties
27 because the court did not adopt the Mutual Release and Settlement
28 Agreement as an order of the court. Furthermore, the court does

1 not have jurisdiction over the person of Gerald Armstrong.

2
3 Date: December 16, 1991


4 Toby L. Plevin,
5 Attorney for Gerald Armstrong
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In preparing the opposition to the enforcement motion, counsel for Mr. Armstrong did not address the fundamental question of whether the court has jurisdiction for such enforcement of settlement agreements. However, the claimed jurisdictional basis for enforcing the Settlement Agreement on which the moving parties rely does not exist. The court has no jurisdiction over Gerald Armstrong at all at this time.

In the moving papers, the Church of Scientology deals with the jurisdictional issue perfunctorily, in one sentence. The brief states:

"Not only did the parties agree that this Court would retain jurisdiction to enforce the terms of the settlement agreement [Ex. A, para.20] but this Court has the inherent power as well to compel obedience to its judgments and oversee and enforce execution of its decrees." C.C.P. 128(4); Brown v. Brown (1972) 22 Ca. App. 3d 82, 84, 99 Cal. Rptr 311, 312.

While this suggests that the Mutual Release and Settlement Agreement ("Settlement Agreement") was adopted as an order of the court, the record of this action is to the contrary. Indeed, not only was the Settlement Agreement not adopted as an order of the court, the Settlement Agreement was never even filed with the court!

Turning to the effect of the parties' agreement that the court retain the power to enforce the settlement, that "grant" of jurisdiction is not effective: litigants do not have the power to confer jurisdiction upon the courts.

1 I. THE SETTLEMENT AGREEMENT IS NOT AN
2 ORDER OF THE COURT AND THEREFORE IS NOT
3 ENFORCEABLE UNDER C.C.P. 127(a)(4).¹

4 C.C.P. 127(a)(4) provides:

5 "Every court shall have the power to do all
6 of the following:

7 (4) To compel obedience to its judgments,
8 orders and process, and to the orders of a
9 judge out of court in an action or
10 proceeding pending therein."

11 Notably, the section does not confer power upon the court to
12 enforce the settlement agreements of the parties before it. Thus,
13 in order to determine whether there is any merit to the
14 contention that this section gives the court power to enforce the
15 Settlement Agreement, we must determine whether the terms of the
16 Settlement Agreement were made part of any "judgment, order (or)
17 process" of the court.

18 In this connection the moving parties rely on the "Order
19 Dismissing Action with Prejudice", Exhibit Q to the Moving
20 Papers. This order states, in its entirety:

21 "Upon consideration of the parties'
22 Stipulation for Dismissal, the "Mutual
23 Release of All Claims and Settlement
24 Agreement" and the entire record herein, it
25 is

26 ORDERED AND ADJUDGED:

27 1. That this action is dismissed
28 with prejudice.

2. That an executed duplicate
original of the parties' "Mutual
Release of All Claims and

26 ¹The citation to C.C.P. 127(4) must be a typographical
27 error. There is no such section. It would appear that the
28 church parties intended to cite to 127(a)(4) which is the
section dealing with the court's inherent power to enforce its
decrees.

1 Settlement Agreement" filed herein
2 under seal shall be retained by the
3 Clerk of this Court under seal."

4 Dated: December 11, 1986

5 Hon. Paul G. Breckenridge

6 The only order of the court in the above quoted order
7 respecting the Mutual Release and Settlement Agreement was that
8 it be filed; the Order Dismissing Action did not adopt the
9 Settlement Agreement as an order, judgment or process of the
10 court. Thus, section 127(a)(4) is not applicable and does not
11 confer power upon this court to enforce the Settlement Agreement.

12 In fact, as this court may recall, the proceedings initiated
13 in 1988 by Bent Corydon for the unsealing of the court files of
14 this action brought to light the fact that the Settlement
15 Agreement was not part of the official records of this proceeding
16 and that it had never been filed. Specifically, after being
17 given access to the court file, Corydon's counsel discovered the
18 above referenced Order Dismissing Action but also noted that the
19 document had not been not filed or recorded in the Register of
20 Actions. On the other hand, the file did contain two minute
21 orders which confirmed that the Settlement Agreement had not been
22 filed. Declaration of Toby L. Plevin para 2. Thereafter, in
23 February 1989 Corydon filed a motion with this court requesting
24 that the Church of Scientology parties be ordered to file the
25 document. In response, those parties--who today are seeking to
26 enforce that Settlement Agreement as if it were the judgement or
27 order of the court--admitted that it had not been filed in spite
28 of the representation to the court to the contrary. See Brief in

1 Opposition to Motion of Bent Corydon for an Order Directing the
2 Parties to File an Executed Duplicate Original of the Mutual
3 Release and Settlement Agreement, dated February 13, 1989.
4 Furthermore, they opposed the motion claiming, inter alia, that
5 the parties to a settlement agreement are not required to file
6 the agreement with the court. This court agreed with that
7 contention and denied the motion at the hearing thereon on
8 February 21, 1989..

9 The Order Dismissing Action, quoted in full above, does not
10 reserve any jurisdiction or adopt any of the terms of the
11 Settlement Agreement expressly or by incorporation; it merely
12 ordered that the Settlement Agreement be filed, an order which
13 the moving parties apparently felt free to ignore. Thus, we are
14 confronted with the following irony: In 1989 the Church of
15 Scientology parties contended that they were not required to file
16 the Settlement Agreement and that there was no reason for it to
17 be part of the file yet now they argue that that same document
18 has the force and effect of a court order or judgment! However,
19 since the Mutual Release and Settlement Agreement was never made
20 an order of the court, C.C.P. 127(a)(4) is not effective to give
21 the court power to enforce it.²

22
23 ²Armstrong notes that, but for the fortuitous
24 circumstance that his present counsel, Toby L. Plevin,
25 had the opportunity to inspect the file, the fact that
26 the moving parties' claim that the Mutual Release and
27 Settlement Agreement was an order of the court is not
28 true would not have been known. Nor would counsel have
known that it was not even filed. It is again obvious
that the church parties have used the sealing of this
file not to protect a valid interest, a fact recognized
by the Court of Appeal in its recent ruling, but have
instead used it to attempt to perpetrate a fraud upon
Gerald Armstrong, because he has no access to the sealed

1 II. THIS COURT HAS NO JURISDICTION TO
2 ENFORCE THE SETTLEMENT AGREEMENT
3 GENERALLY AND NO PERSONAL JURISDICTION
4 OVER GERALD ARMSTRONG

5 It is a basic of concept of jurisdiction that the court's
6 power derives from the state and extends only to those matters as
7 to which jurisdiction is conferred by the state. Thus, the
8 jurisdiction over a party continues from the time he commences an
9 action or enters a general appearance and "continues throughout
10 subsequent proceedings in the action." C.C.P. 410.50. In the
11 absence of the specific authority conferred by 127(a)(4), courts
12 do not have continuing jurisdiction over the causes and the
13 parties after the entry of judgment or final order except in
14 exceptional circumstances. Outside the limited area of child
15 support and decrees in the family law and probate areas, there
16 must be an express reservation of power, and, even then it is
17 generally limited to the power to modify the judgment rather than
18 to police the on-going obligations of the parties. See Pasadena

19 v. Alhambra (1949) 33 Cal.2d 908, 936, 207 P.2d 17. As we have
20 court file, and to deal less than candidly with the court
21 itself.

22 It would seem that, regardless of whether the Court
23 of Appeal's decision to overturn the general unsealing of
24 the file by this court was correct as a matter of law
25 under the circumstances presented to it at that time, the
26 court can not condone such conduct or permit its
27 equitable power to be misused in this fashion. Mr.
28 Armstrong joined, at the appellate level, in the effort
 to keep the file unsealed. Thus, at the present time,
 only the church parties desire to keep the file sealed
 pursuant to a stipulation which was not an appropriate
 basis to seal the file in the first place. Their abuse
 of that seal should not be permitted to continue.
 Armstrong therefore suggests that the court issue an
 O.S.C. why the misrepresentations of the moving parties
 do not warrant the unsealing of the file to prevent
 further miscarriage of justice.

1 seen, there was no express reservation of power in this instance.
2 Accordingly, we must next determine whether all proceedings in
3 this action are now concluded, ie. whether there is any basis for
4 continuing jurisdiction in this court over Gerald Armstrong.


5 The original complaint in this action was the complaint of
6 the Church of Scientology of California against Gerald Armstrong.
7 Subsequently, Mr. Armstrong filed a cross-complaint. The
8 complaint and cross-complaint were bifurcated and the trial in
9 1984 was a trial only of those matters raised in the complaint.
10 Although the Church of Scientology parties immediately appealed
11 Judge Breckenridge's ruling in favor of Mr. Armstrong, the appeal
12 thereon was dismissed as premature given that the cross-complaint
13 was still pending. Declaration of Toby L. Plevin, para. 4. The
14 Order Dismissing Action on which the moving parties rely
15 dismissed only the cross-complaint of Gerald Armstrong thus
16 terminating the proceedings in that action. Accordingly, there
17 is no basis for jurisdiction over Mr. Armstrong on the basis of
18 the cross-complaint or the Settlement Agreement.

19 Turning then to the proceedings on the complaint: after the
20 execution of the order that dismissed the cross-complaint, the
21 Church of Scientology refiled its appeal of Judge Breckenridge's
22 decision. That decision was affirmed by the Second District
23 Court of Appeals on July 29, 1991. Thereafter, the Scientology
24 parties filed a petition for certiorari to the California Supreme
25 Court. However, that petition was denied on October 17, 1991.
26 See Exhibit A hereto. Thus Judge Breckenridge's decision is now
27 final for all purposes and there is no longer any jurisdiction
28 over Mr. Armstrong in this action.

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1 Since the court does not have personal jurisdiction over Mr.
2 Armstrong and since it does not have power to enforce the
3 Settlement Agreement as an order of the court under C.C.P.
4 127(a)(4), this court can not hear this motion or enforce the
5 terms of the agreement.

6
7 Dated: December 16, 1991


Toby L. Plevin
Attorney for Gerald Armstrong

DECLARATION OF TOBY L. PLEVIN

I, Toby L. Plevin, declare as follows:

1. I am attorney of record for Gerald Armstrong in the case captioned Church of Scientology of California et. al. v. Gerald Armstrong L.A.S.C. Case No. 420153.

2. In November 1988 I represented Bent Corydon in a motion to unseal the court file in this case. Mr. Corydon and I, along with other counsel then representing Mr. Corydon, were given access to the file by this court's order. As a result of that access I reviewed the file in some detail.

3. Among other things I noted about the file, I observed that, although the Order Dismissing Action recited that the Mutual Release and Settlement Agreement between Mr. Armstrong and the Scientology organization was to have been filed on or about December 11, 1991, it had not been filed at all. There were two minute orders of the court which also stated that the document had not been filed. As a result, in February 1989, I filed a motion for an order directing that the Scientology organization file the document. Their opposition to that motion is attached hereto as Exhibit A.

4. I have reviewed the file in this matter extensively and am familiar with the proceedings therein. The original complaint in this action was the complaint of the Church of Scientology of California against Gerald Armstrong. Subsequently, Mr. Armstrong filed a cross-complaint. The complaint and cross-complaint were bifurcated and the trial in 1984 was a trial only of those matters raised in the complaint. Although the Church of Scientology parties immediately appealed Judge Breckenridge's

1 ruling in favor of Mr. Armstrong, the appeal thereon was
2 dismissed as premature given that the cross-complaint was still
3 pending. On July 29, 1991, the Second District Court of Appeal
4 affirmed Judge Breckenridge's decision in favor of Mr. Armstrong.

5 5. Attached hereto as Exhibit A is a true copy of the
6 decision of the California Supreme Court denying the petition for
7 certiorari filed by the Church of Scientology parties in this
8 action.

9 I swear under penalty of perjury under the laws of the State
10 of California that the foregoing is true, this 16th day of
11 December 1991.

12 
13 Toby L. Plevin



001478

A

10-21-91

Second Appellate District, Division Three, No. B025920/B038975
S022840

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Appellant

SUPREME COURT
FILED

v.

OCT 17 1991

GERALD ARMSTRONG, Respondent

Robert Wandruif Clerk

And Companion Case

DEPUTY

Petition for review DENIED.

LUCAS

Chief Justice

001479

1
2
3 CERTIFICATE OF SERVICE

4 I hereby certify that on this the 16TH day of December
5 1991 I served a true and correct copy of the within document
6 entitled Supplemental Opposition of Gerald Armstrong
7 on all parties of record by first class mail, postage-prepaid or
8 by hand as noted below on the following:
9

10 WILLIAM T. DRESCHER
11 c/o BOWLES & MOXON BY HAND
Suite 338
Calabasas, California 91302

12 BOWLES & MOXON
13 6255 Sunset Blvd.
Suite 2000
14 Hollywood, California 90028

15 ERIC LIEBERMAN
16 Rabinowitz, Boudin et al
740 Broadway 5th Fl
New York, New York 10003-9518

17 JOSEPH A. YANNY BY HAND
18 Law Offices of Joseph A. Yanny
19 1925 Century Park East 12th Floor
Los Angeles, Ca. 90067

20 Executed on this 16th day of December 1991, under penalty of
21 perjury under the laws of the State of California.
22

23 
24 _____
25 Toby L. Plevin
26
27
28

001481

EXHIBIT JJ

1 Eric M. Lieberman
2 RABINOWITZ, BOUDIN, STANDARD,
3 KRINSKY & LIEBERMAN, P.C.
4 740 Broadway, Fifth Floor
5 New York, New York 10003-9518
6 (212) 254-1111

7 Laurie J. Bartilson
8 Randall A. Spencer
9 BOWLES & MOXON
10 6255 Sunset Blvd., Suite 2000
11 Hollywood, CA 90028
12 (213) 661-4030

13 WILLIAM T. DRESCHER
14 23679 Calabasas Road, Suite 338
15 Calabasas, CA 91302
16 (818) 591-0039

17 Attorneys for Plaintiff
18 CHURCH OF SCIENTOLOGY OF CALIFORNIA

RECEIVED

DEC 24 1991

HUB LAW OFFICES

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF LOS ANGELES

21 CHURCH OF SCIENTOLOGY OF
22 CALIFORNIA, a California
23 corporation,

24 Plaintiff,

25 vs.

26 GERALD ARMSTRONG; DOES 1
27 through DOE 10, inclusive,

28 Defendants.

29 GERALD ARMSTRONG,

30 Cross-Complainant,

31 vs.

32 CHURCH OF SCIENTOLOGY OF
33 CALIFORNIA, a California
34 corporation; L. RON HUBBARD;
35 and DOES 1 through 100,
36 inclusive,

37 Cross-Defendants.)

) Case No. C 420153

) SUPPLEMENTAL REPLY IN
) SUPPORT OF MOTION TO
) ENFORCE SETTLEMENT AGREEMENT;
) DECLARATION OF RANDALL A.
) SPENCER

) DATE: December 23, 1991
) TIME: 9:00 a.m.
) DEPT: 56

) DISCOVERY CUT-OFF: None
) MOTION CUT-OFF: None
) TRIAL DATE: None

001482

1
2 I. INTRODUCTION

3 Plaintiff's motion to enforce the settlement agreement with
4 Armstrong was served upon him on October 3, 1991. Armstrong's
5 Opposition was served on November 18, 1991, and plaintiff's Reply
6 was served on November 22, 1991. Now, one week before the
7 December 23 hearing, Armstrong served upon plaintiff's counsel a
8 "supplemental Opposition," which raises an entirely new issue;
9 namely, whether this Court has jurisdiction to hear plaintiff's
10 motion. Armstrong's counsel has offered no excuse whatsoever as
11 to why this issue could not have been raised in Armstrong's
12 original Opposition, or an excuse for raising the issue 28 days
13 after serving his original Opposition. These litigious tactics
14 have only increased the Court's burden, as well as the burden to
15 opposing counsel. Plaintiff's counsel has had three days to
16 respond to an issue which should have been raised on November 18.
17 In addition to its late filing, Armstrong's supplemental
18 opposition is, on its merits, completely frivolous, baseless and
19 devoid of any merit whatsoever. An award of substantial
20 sanctions against Armstrong would be appropriate.

21 II. THE COURT'S ORDER OF DECEMBER 11, 1986
22 RESERVED THE JURISDICTION TO HEAR THIS MOTION

23 C.C.P. section 128(a)(4) provides:

24 Every court shall have the power to do all the
25 following:

26 *~*~*

27 (4) To compel obedience to its judgments, orders, and
28 process, and to the orders of a judge out of court, in
an action or proceeding pending therein.

1 In his supplemental opposition, Armstrong contends that this
2 Court lacks jurisdiction to enforce the settlement agreement he
3 entered into, because the agreement was not made a part of the
4 Court's order. The order, however, specifically recites that it
5 was based upon the "consideration of the parties' stipulation for
6 dismissal, the 'mutual release of all claims and settlement
7 agreement' and the entire record herein." Paragraph 20 of the
8 agreement, on page 15, specifically states:

9 Notwithstanding the dismissal of the lawsuit pursuant
10 to paragraph 4 of this agreement, the parties hereto
11 agree that the Los Angeles Superior Court shall retain
12 jurisdiction to enforce the terms of this agreement.

13 The agreement was executed by Armstrong and his attorney, Michael
14 J. Flynn, on December 6, 1986. The order also referred to a
15 companion stipulation for dismissal. Paragraph two of that
16 stipulation provided that:

17 On December 6, 1986, the parties entered into a "mutual
18 release of all claims and settlement agreement."

19 * * *

20 This court shall retain jurisdiction, and may reopen
21 this case at any time for the purpose of enforcing said
22 agreement.

23 In construing the effect of an order, the totality of
24 surrounding circumstances will be examined to determine what was
25 reasonably contemplated by the parties and the court. In re
26 Gideon, 157 Cal.App.2d 133, 320 P.2d 599 (1958); People v. Landon
27 White Bail Bonds, 234 Cal.App.3d 66, 285 Cal.Rptr. 575, 581, 582
28 (1991). When tested by these principals, Armstrong's contention

1 must fail. In a variety of contexts the California courts have
2 repeatedly stated the governing principles for the interpretation
3 of orders. In Roraback v. Roraback, 38 Cal.App.2d 592, 101 P.2d
4 772 (1940) the court said:

5 ... the true measure of an order, ... is not an
6 isolated phrase appearing therein, but its effect when
7 considered as a whole. (citations) In construing
8 orders, they must always be considered in their
9 entirety, and the same rules of interpretation will
10 apply in ascertaining the meaning of a court's order as
11 in ascertaining the meaning of any other writing. If
12 the language of the order be in any degree uncertain,
13 then reference may be had to the circumstances
14 surrounding, and the court's intention in making of the
15 same. (citations) 101 P.2d at 774.

16 In the Roraback case, the court referred to the reporter's
17 transcripts of two hearings to determine the trial court's
18 intention in making the subject order. Similarly, in Cottom v.
19 Bennett, 14 Cal.App.2d 709, 29 Cal.Rptr 715, 720 (1963) the court
20 said that "The rule with respect with orders and judgment is that
21 the entire record may be examined to determine their scope and
22 effect." There, the court held that ambiguities in an
23 interlocutory divorce decree could be resolved by referring to
24 the terms of the order for judgment. Tallman v. Tallman, 29
25 Cal.App.2d, 39, 39 Cal.Rptr. 863, 866 (1964) the court, in
26 construing a prior order, held that it was proper to consider the
27 declaration of an attorney as to the proceedings which transpired
28 in the court's chambers when the original order was made. In so

1 holding, the court cited Roraback v. Roraback, 38 Cal.App.2d 592,
2 101 P.2d 772 (1940) with approval. Similarly, in Western
3 Greyhound Lines v. Superior Court, 165 Cal.App.2d 216, 331 P.2d
4 793 (1958) the court, in construing an order, held that it was
5 proper to refer to the notice of motion, to determine the relief
6 requested.

7 III. SANCTIONS SHOULD BE IMPOSED AGAINST ARMSTRONG
8 FOR CHALLENGING THE VALIDITY OF A STIPULATION
9 EXECUTED BY HIS COUNSEL AND A SETTLEMENT AGREEMENT
10 WHICH HE EXECUTED

11 Armstrong's challenge to the court's jurisdiction is another
12 circumstance in aggravation of his already disgraceful attempt to
13 circumvent a stipulation executed by his counsel, and a
14 settlement agreement which he executed knowingly, freely and
15 voluntarily, for consideration. The foregoing authorities amply
16 demonstrate, that the stipulation and settlement agreement were
17 a part of the court's order of dismissal. Such tactics are a
18 perfect example of gamesmanship in its most odious form. The
19 "supplemental opposition" filed by Armstrong's present attorney
20 is a complete waste of the Court's precious judicial time and
21 resources and should receive the Court's severe condemnation.

22 Dated: December 19, 1991

Respectfully submitted,

BOWLES & MOXON

By: Randall A. Spencer
RANDALL A. SPENCER

Eric M. Lieberman
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.

WILLIAM T. DRESCHER

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF
CALIFORNIA

DECLARATION OF RANDALL A. SPENCER

I, Randall A. Spencer, declare:

1. I am one of the attorneys for plaintiff in the above action and I have personal knowledge of the facts herein. If called as a witness, I could and would testify competently to the following facts.

2. I am informed and believe and thereon state that, attached hereto as exhibit A and made a part hereof is a true and exact copy of joint stipulation for dismissal with prejudice of Armstrong's cross-complaint. I am further informed and believe and thereon state that the original of the foregoing stipulation was filed contemporaneously with the Order for dismissal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of December, 1991 in Los Angeles, California.

Randall A. Spencer
RANDALL A. SPENCER

EXHIBIT A

001488

1 BRUCE BUNCH
2 CONTOS & BUNCH
3 5855 Topanga Canyon Boulevard
4 Suite 400
5 Woodland Hills, CA 91367
6 (818) 716-9400

7 Attorneys for Cross-Complainant
8 Gerald Armstrong

9 JOHN G. PETERSON
10 PETERSON AND BRYNAN
11 8530 Wilshire Boulevard
12 Suite 407
13 Beverly Hills, CA 90211
14 (213) 659-9965

15 Attorneys for Plaintiff and
16 Cross-Defendant CHURCH OF
17 SCIENTOLOGY OF CALIFORNIA

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

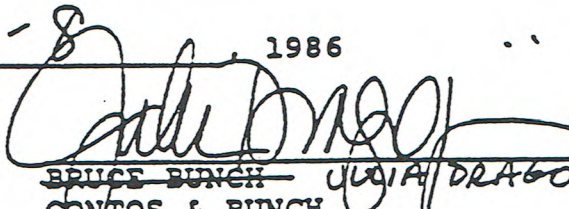
19 FOR THE COUNTY OF LOS ANGELES


20 GERALD ARMSTRONG,	)	No. C 420 153
	)	(Severed Action)
21 Cross-Complainant,)	
)	
22 v.	)	JOINT STIPULATION
	)	OF DISMISSAL
23 CHURCH OF SCIENTOLOGY OF)	
24 CALIFORNIA, a California)	
25 Corporation,)	
)	
26 Cross-Defendant.)	

27 In satisfaction of valuable and other consideration
28 tendered to the Cross-Complainant by the Cross-Defendant;
receipt of which is hereby acknowledged, the parties to the
above-entitled action, pursuant to California Code of Civil
Procedure § 581 hereby stipulate that said Cross-Complaint be
dismissed with prejudice.

1 On December 6, 1986, the parties entered
2 into a "Mutual Release of All Claims and Settlement Agreement."
3 An executed copy of same Agreement has been filed herein under
4 seal and shall be kept under seal by the Clerk of this Court.
5 This Court shall retain jurisdiction, and may reopen this case
6 at any time for the purpose of enforcing said Agreement.

7 DATED: 12-8 1986

8 
9 ~~BRUCE BUNCH~~ ULIA DRAGOJEVIC
10 CONTOS & BUNCH
11 5855 Topanga Canyon Boulevard
12 Suite 400
13 Woodland Hills, CA 91367
14 (818) 716-9400

15 
16 JOHN G. PETERSON
17 PETERSON & BRYNAN
18 8530 Wilshire Boulevard
19 Suite 407
20 Beverly Hills, California 90211
21 (213) 659-9965
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On December 19, 1991, I caused the foregoing document described as SUPPLEMENTAL REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT; DECLARATION OF RANDALL A. SPENCER to be served on interested parties in this action, to the persons at the addresses set forth as follows:

SEE ATTACHED SERVICE LIST

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes, with postage thereon fully prepaid, to be placed in the United States mail at Hollywood, California.

Executed on December 19, 1991 at Hollywood, California.

Don Hernandez

001491

SERVICE LIST

Barry Van Sickle **HAND SERVED**
CUMMINS & WHITE
865 S. Figueroa, 24th Floor
Los Angeles, CA 90017

Toby L. Plevin **HAND SERVED**
Attorney at Law
10700 Santa Monica Blvd., Suite 4300
Westwood, CA 90025

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, CA 94960

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

Joseph A. Yanny **HAND SERVED**
Law Offices of Joseph A. Yanny
1925 Century Park East
Suite 1260
Los Angeles, CA 90067

AMENDED IN SENATE JANUARY 27, 1992

AMENDED IN SENATE JANUARY 23, 1992

AMENDED IN SENATE MAY 30, 1991

AMENDED IN SENATE MAY 9, 1991

AMENDED IN SENATE APRIL 8, 1991

SENATE BILL

No. 711

Introduced by Senator Lockyer

March 6, 1991

An act to amend Section 3426.5 of the Civil Code, and to add Section 188 to the Code of Civil Procedure, relating to confidentiality.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as amended, Lockyer. Confidentiality of writings. Existing law provides for the confidentiality of trade secrets, government records, records maintained by financial and other institutions, privileged communications, and other writings.

This bill would provide, as a matter of public policy, that in certain actions based on fraud, personal injury, or wrongful death no *part of any* confidentiality agreement, settlement agreement, stipulated agreement, or protective order, other than an initial protective or discovery order pending conclusion of litigation, shall be entered or enforceable, other than as to provisions requiring nondisclosure of the amount of money paid to settle the claim, unless a final protective order *regarding that information* is entered by the court after a noticed motion, as specified. The bill would establish the bases for these protective orders and a procedure for contesting a court order, judgment, agreement, or contract that violates this provision, and would provide that a prevailing plaintiff is

entitled to attorneys' fees and costs, as specified. The bill would prohibit the sale or offer for sale by an attorney of information obtained through discovery, as specified. The bill would also make conforming changes in the law regarding trade secrets.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3426.5 of the Civil Code is
2 amended to read:

3 3426.5. Subject to Section 188 of the Code of Civil
4 Procedure, in an action under this title, a court shall
5 preserve the secrecy of an alleged trade secret by
6 reasonable means, which may include granting
7 protective orders in connection with discovery
8 proceedings, holding in-camera hearings, sealing the
9 records of the action, and ordering any person involved
10 in the litigation not to disclose an alleged trade secret
11 without prior court approval.

12 SEC. 2. Section 188 is added to the Code of Civil
13 Procedure, to read:

14 188. Notwithstanding any other provision of law, as a
15 matter of public policy, in actions based on fraud, or
16 based upon personal injury or wrongful death alleging
17 damages caused by a defective product or an
18 environmental hazard, no *part of any* confidentiality
19 agreement, settlement agreement, stipulated
20 agreement, or protective order to keep from public
21 disclosure information that is evidence of fraud, a
22 defective product, or an environmental hazard shall be
23 entered or enforceable upon the settlement or
24 conclusion of any litigation or dispute concerning the
25 fraud, defective product, or environmental hazard,
26 unless a final protective order *regarding that*
27 *information* is entered by the court after a noticed
28 motion. Subdivisions (a) to ~~(i)~~ (j), inclusive, as follow,
29 apply to actions described in this section:

30 (a) In the court's review of the basis and scope of the

1 proposed final protective order:

2 (1) The party seeking the final protective order shall
3 bear the burden for its justification.

4 (2) The court shall independently examine the basis
5 and scope of the proposed final protective order and shall
6 make findings pursuant to this section for each writing or
7 ~~term of the agreement~~ *item of information* proposed for
8 nondisclosure under the final protective order.

9 (3) A final protective order shall be entered only for
10 good cause shown, pursuant to this section, in order to
11 encourage the broadest availability of information *that is*
12 *evidence of fraud, a defective product, or an*
13 *environmental hazard*, to the public.

14 (b) This section does not affect the issuance of any
15 initial protective order or any discovery order protecting
16 writings or information during the course of litigation.
17 However, any initial protective or discovery order which
18 pertains to evidence of fraud, a defective product, or an
19 environmental hazard shall expire automatically within
20 30 days of entry of final judgment. Any writing or
21 information which provides evidence of fraud, a
22 defective product, or an environmental hazard that was
23 protected from disclosure by the terms of any discovery
24 order or initial protective order shall not be sealed or
25 subject to further confidentiality pursuant to any
26 agreement or final protective order unless the court
27 affirmatively examines the writing or information and
28 issues a final protective order pursuant to the provisions
29 of this section.

30 (c) Any information that is evidence of fraud, a
31 defective product, or an environmental hazard, which is
32 the subject of a confidentiality agreement, settlement
33 agreement, or stipulated agreement shall not be subject
34 to nondisclosure by reason of that agreement, unless a
35 final protective order or other court approval is issued on
36 the basis that the information qualifies for nondisclosure
37 on any one of the following grounds:

38 (1) The subject matter is privileged pursuant to
39 Section 1040 of the Evidence Code.

40 (2) Disclosure would violate an interest protected by

1 the right to privacy guaranteed in the California
2 Constitution.

3 (3) Disclosure would reveal trade secrets information
4 which cannot be excised reasonably, as set forth in
5 subdivision (f).

6 (4) Disclosure would reveal confidential personal or
7 business information which is not a trade secret and that
8 information does not indicate a public risk, hazard, or
9 danger which would defraud the public, cause serious
10 environmental danger, or pose a serious threat to the
11 health and safety of one or more persons.

12 (d) In a petition for a final protective order *regarding*
13 *information or writings that are evidence of fraud, a*
14 *defective product, or an environmental hazard*, trade
15 secrets may be granted confidentiality only where there
16 is a particularized showing of all of the following:

17 (1) Secrecy is in the public interest.

18 (2) The proponent has a cognizable interest in the
19 material, in that the material contains trade secrets as
20 defined by Section 3426 of the Civil Code.

21 (3) Public disclosure would cause serious harm to the
22 party requesting confidentiality.

23 (e) If the court finds a basis for a final protective order
24 or other approval of confidentiality but there are writings
25 which indicate a public risk, hazard, or danger which
26 would cause serious environmental damage, or indicate
27 the posing of a serious threat to the health and safety of
28 one or more persons or a serious threat of fraud on the
29 public, the court either (1) shall not issue ~~not continue~~
30 ~~the the final~~ protective order where the court finds the
31 public risk, hazard, or danger indicated in the writings
32 would cause imminent danger to the public, or (2) shall
33 issue the final protective order and affirmatively notify all
34 interested regulatory agencies with possible jurisdiction
35 over that damage or threat, and the Attorney General of
36 the State. If the court is uncertain as to the appropriate
37 regulatory agency to notify, it may notify the Division of
38 Occupational Safety and Health of the Department of
39 Industrial Relations, which shall notify the appropriate
40 agencies. Any notification shall also be protected by the

1 protective order ~~or agreement~~. The recipient agencies
2 shall comply with the ~~agreement or~~ order to maintain
3 confidentiality unless disclosure is required, in its
4 judgment, to protect the environment or the health and
5 safety of one or more persons.

6 (f) Any person has standing to contest an order,
7 judgment, agreement, or contract that violates this
8 section. A person may contest an order, judgment,
9 agreement, or contract that violates this section by
10 motion in the court that entered the order or judgment,
11 or by writ of mandate review pursuant to Section 1085, as
12 appropriate. Upon such a motion or writ, the court shall
13 review the contested documents in camera. If the court
14 finds there are writings or portions of writings of an
15 agreement which are not properly confidential pursuant
16 to this section, and it is reasonably feasible to excise or
17 redact them, then the court shall make those portions not
18 properly confidential public and subject them to
19 disclosure. Any person bringing an action against the
20 court or the party seeking protection under this section,
21 and who prevails in any part of his or her motion or writ,
22 shall be entitled to costs and reasonable attorney's fees
23 from the party seeking protection.

24 (g) Nothing in this section shall be deemed to compel
25 the disclosure of any writing or interest protected by
26 Section 1 of Article 1 of the California Constitution.

27 (h) Nothing in this section shall be deemed to limit a
28 court's authority or discretion to prohibit the
29 enforcement of a part or all of any confidentiality
30 agreement, settlement agreement, stipulated
31 agreement, or protective order in any other cases.

32 (i) Nothing in this section shall be deemed to prohibit
33 the entry or enforcement of that part of a confidentiality
34 agreement, settlement agreement, or stipulated
35 agreement between the parties which requires the
36 nondisclosure of the amount of any money paid in
37 settlement of a claim.

38 (j) No attorney shall sell or offer for sale any
39 information obtained through discovery to any member
40 of the State Bar or to any other person in violation of the

1 prohibitions on attorney solicitation, fee splitting, or
2 financial arrangements among lawyers or nonlawyers
3 included in Rules 1-320, 1-400, and 2-200 of the Rules of
4 Professional Conduct adopted by the Supreme Court.
5 Violation of this paragraph shall be a basis for professional
6 discipline by the State Bar. This section does not alter or
7 mitigate any existing rule or provision which may also be
8 applicable to the conduct.

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EXHIBIT E

After an initial 10% of the income has been deducted for research, and an additional 10% taken to operate as a reserve, the remaining 80% is allocated into the categories of 31% to salaries, 4% for payroll deductions, 17% for building expenses, 21% for organizational expenses and 7% to commissions.

It is ridiculous to think that the Church's Flag Land Base, which is composed of hundreds of staff in a number of different buildings, and which delivers Scientology counselling and training to thousands of parishioners on a weekly basis, would be able to cover its expenses using only 10 percent of its weekly income.

Corydon goes on to say that tens of millions of dollars paid for services delivered to Church members at the Flag organization were channeled into Hubbard's personal accounts.

There is no documentation to support this statement by Corydon. In fact, his claims are based on nothing more than hearsay, rumor and lies gathered from a small cabal of thieves, perjurers and disreputable sources.

Mr. Hubbard hardly needed any income from the Church of Scientology. As one of the most prolific and popular authors in history, his income speaks for itself. L. Ron Hubbard's career as a writer spanned more than 50 years, with over 22 million copies of his fiction books sold.

Since October 1982, there have been over 1,900,000 of Mr. Hubbard's fiction books sold. In 1985 and 1986 alone, 3,907,522 nonfiction books by L. Ron Hubbard were sold.

An unprecedented event in publishing history, L. Ron Hubbard's "Dianetics: The Modern Science of Mental Health," originally published in 1950 and carried on the prestigious New York Times best-seller list, returned to the New York Times list for over six months in 1986 and 1987. Mr. Hubbard's income from the royalties on sales of his extremely popular books is self-explanatory.

Not only was Mr. Hubbard not making his income from the Church of Scientology, but he also gave the majority of his estate to the Church in his will.

COMBAT IN WORLD WAR II

John Sanborne, one of Corydon's main sources for this book, claims that L. Ron Hubbard had not been in combat during World War II.

However, an Action Report from May 1943 shows that L. Ron Hubbard, as the Commanding Officer of the submarine chaser PC 815, engaged in direct combat with two submarines off the coast of Oregon.

TRAVELS IN ASIA

Gerry Armstrong, another one of Corydon's main sources in the book, claims that L. Ron Hubbard "... did not spend several years throughout Asia," and that Mr. Hubbard's total time in Asia was "a few weeks."

L. Ron Hubbard, in fact, was in Asia and the Orient several times during a three-year period, during which his travels were quite extensive.

Chapter 8

HOMER SCHOMER -----

Homer Schomer is a good example of the discreditable sources Corydon used for his book.

Schomer, a former Scientologist and staff member, was proven to be a perjurer during his testimony in a court case between the Church of Scientology and Julie Christofferson in 1985.

Homer had testified in 1984 in a court case brought by the Church of Scientology against Gerald Armstrong (a former staff member who had stolen valuable documents from Church archives).

In the Christofferson case, Schomer admitted to having committed perjury in the previous Armstrong case.

In 1984, Schomer also attempted to extort money from the Church of Scientology. In sworn affidavits, two Church staff members testified that when they met with Schomer in his own home in an attempt to help him reconcile his differences with the Church, Schomer offered to "stay quiet" about information that he felt could be damaging to the Church, if the Church paid him the exorbitant sum of \$200,000.00.

Schomer was also involved in passing stolen sacred and confidential Church scriptures to the Los Angeles law firm of Charles O'Reilly. In a hearing in the Church of Scientology's lawsuit on this matter, it was clearly shown that Schomer had provided copies of the stolen materials to O'Reilly's firm.

The materials were originally stolen in Denmark by an apostate former member of the Church and were then disseminated to the United States.

In the above-mentioned hearing, the judge precluded any further use and dissemination of the stolen Church scriptures. (See chapter entitled "David Mayo.")

Schomer's record as a perjurer, extortionist and thief has been disregarded by Corydon, who apparently could find no better "sources" for his book.

Chapter 14

REHABILITATION PROJECT FORCE -----

Corydon devotes a chapter in his book to the Church of Scientology's Rehabilitation Project Force (RPF). In this chapter, he includes such statements as the claim that individuals on the RPF are "slaves who eat scraps" and have "the look of hunted animals."

This perhaps would be a fine piece of sensational writing for the National Enquirer, but such a description of the Rehabilitation Project Force is a complete fabrication.

Corydon has used a description of the RPF provided by Gerry Armstrong, among others. Armstrong's description in this book, however, is completely contrary to his own previous sworn affidavit about the RPF.

(Gerry Armstrong's description of the RPF in Corydon's book can also be viewed in light of Armstrong's numerous false claims and lies on other subject matters: See chapter on Corydon as an "author" for further information on Gerry Armstrong's incompetence as a researcher.)

The Rehabilitation Project Force, as its name indicates, is a program with the purpose of rehabilitating individuals.

It is not uncommon for executives in high-pressure jobs in the business world to suffer from "burnout" and be totally unable to continue with their jobs. In the Sea Organization, if an individual is unable to keep up with the demands of his job or if he continually transgresses against the policies of his group, steps are taken to help the person so that he again becomes a contributing member of his organization. There are many different actions and programs which aide a Church staff member in this way. One of these is the Rehabilitation Project Force.

Individuals who go to the RPF do so of their own free will. If someone chooses not to do the RPF, he is free to leave. The fact is that those who are desirous of working in the Church and are interested in improving themselves (which is the very essence of what Scientology is all about), join the Rehabilitation Project Force by their own choice.

Individuals on the Rehabilitation Project Force receive extensive spiritual counseling. In exchange, they do work such as landscaping, building renovations and so forth.

001505

Deponent: Kenneth David Long
Deponent's First Affidavit
Sworn on 5th October 1987
In support of Plaintiff
Resworn on 7th October 1987

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No.6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED Defendants

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for 11 years, and a member of the Church's staff for 7 years. I am employed by the Church of Scientology of California (hereinafter called "the Church") which is a non-profit

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making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States, including the Church's litigation with Gerald D. Armstrong.

2. I have caused to be reviewed a manuscript of approximately 375 pages and entitled "Bare-Faced Messiah" by Russell Miller. There is now produced and shown to me marked "KDL 1" a copy of Mr. Miller's manuscript. This book contains direct quotes from unpublished writings of L. Ron Hubbard including personal diaries. From reading this manuscript it is self-evident that the unpublished quotes could not have been included without having the documents at hand. These documents could not have been obtained except by unauthorized access to them.

3. Mr. Miller in his publication goes into a rather detailed explanation as to how Gerry Armstrong, an ex-employee of the Church, had acquired these private writings of Mr. Hubbard's while working as a researcher on a biography of Mr. Hubbard. My affidavit will explain how these unpublished writings could only have come from Gerry Armstrong in breach of his agreements to keep these private writings absolutely confidential.

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4. Gerald Armstrong was an employee of the Church from February 1969 to December 1981. There is now produced and shown to me marked "KDL 2", as evidence of Mr. Armstrong's employment, a copy of the W-2 Wage and Tax Statements issued by the Church for Mr. Armstrong during the years 1977 and 1978. There is also now produced and shown to me marked "KDL 3" a copy of an Affidavit executed by Mr. Armstrong on April 12, 1980, in which Mr. Armstrong affirmed at paragraph 1 that he was employed by the Church.

5. On January 8, 1980, Mr. Armstrong requested permission from the Founder of the religion of Scientology, Mr. L. Ron Hubbard, to be allowed to create a position within the Church which would compile, protect and preserve Mr. Hubbard's personal papers. Mr. Armstrong informed Mr. Hubbard that his purpose in making the request was because the position would require that "the person doing such would have to have your trust". There is produced and shown to me marked "KDL 4" a copy of Mr. Armstrong's request of January 8, 1980 to Mr. Hubbard. As the Court will see, Mr. Armstrong's request was copied to his supervisors within the Church in the upper right hand corner of the first page.

6. Upon Mr. Armstrong's request, the Church then allowed Mr. Armstrong to create a position within a division of the Church known as the "Personal Office of LRH". There is now

produced and shown to me marked "KDL 5" a copy of the Fictitious Business Name Statement of March 12, 1980 which established the Personal Office of LRH as a fictitious name for the Church of Scientology of California. Mr.

Armstrong's new position was entitled "Senior LRH Personal Public Relations Officer Researcher" ("Snr R Pers PRO Researcher"). There is now produced and shown to me marked "KDL 6" a copy of the dispatch distributed by Mr. Armstrong on February 3, 1980, announcing his assumption of the new position.

7. As the Court will see, Mr. Armstrong was aware of his obligation to hold confidential the information he obtained as an employee of the Church long before he assumed the position of Researcher in 1980 and he continued to remain aware of this obligation while holding that position. There is now produced and shown to me marked "KDL 7" a copy of the Non-Disclosure and Release Bond executed by Mr. Armstrong on March 18, 1977 in which Mr. Armstrong acknowledged his employment with the Church and that any information or knowledge obtained by him as an employee was done so in a relationship of trust and confidence and imparted to him a fiduciary duty to the Church. There is also now produced and shown to me marked "KDL 8" a copy of the dispatch dated February 22, 1980 and written by Mr. Armstrong, in which he describes the value of the materials which he was collecting

and requesting increased security arrangements for the office in which those materials were to be stored.. As the Court will see, Mr. Armstrong stated that he would sleep in the office to ensure the safety of those documents until such time as the security arrangements had been enhanced. There is now also produced and shown to me marked "KDL 9" a dispatch by Mr. Armstrong of May 14, 1980, in which he stated that other Church staff were "extremely reluctant" to furnish him with personal information about Mr. Hubbard's family and friends, and in which Mr. Armstrong obtained access to such information after assuring his fellow staff "as to the confidentiality these files are given".

8. On October 30, 1980, AOSH DK Publications and author Omar V. Garrison entered into an Agreement under which Mr. Garrison was to engage in the writing of a biography of Mr. Hubbard. There is now produced and shown to me marked "KDL 10" a copy of the agreement between Mr. Garrison and AOSH DK Publications. Shortly thereafter, AOSH DK Publications requested assistance from the Church in executing the terms of its agreement with Mr. Garrison, and specifically the assignment of a Church employee who would work as an assistant to Mr. Garrison and "assist in research and office duties as needed". There is now produced and shown to me marked "KDL 11" a copy of the letter of November 14, 1980 sent by the Secretary of the Board for AOSH DK Publications

to the Board of Directors for the Church. As the Court will see, the Board of Directors for the Church confirmed the agreement with the terms of the letter, and later ratified its agreement in a written Resolution. There is now produced and shown to me marked "KDL 12" a copy of the Resolution adopted by the Board of Directors of the Church in adopting the agreements proposed by AOSH DK Publications. Mr. Armstrong was the Church employee thereafter provided to Mr. Garrison pursuant to this agreement.

9. Mr. Armstrong assisted Mr. Garrison as a researcher and office assistant until he voluntarily terminated his employment with the Church on December 12, 1981. As the Court will see, by the time Mr. Armstrong left the Church he had furnished Mr. Garrison with "a great deal of materials" which were in Mr. Garrison's possession. There is now produced and shown to me marked "KDL 13" a copy of Mr. Armstrong's letter of December 12, 1981, in which he resigned his position in the Church.

10. On August 2, 1982, the Church brought a lawsuit against Gerald Armstrong, under two causes of action, namely, conversion and breach of fiduciary relationship, in respect of which the Church sought injunctive relief and imposition of a constructive trust. There is now produced and shown to me marked "KDL 14" a true and accurate copy of the

complaint. On August 24, 1982, the Honourable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for purposes of that action.

11. On October 4, 1982, the Honourable Judge John L. Cole issued an order superseding the Temporary Restraining Order, but which maintained the sealing and confidentiality provisions of his prior Order pending resolution of the matter. There is now produced and shown to me marked "KDL 16" a copy of the Preliminary Injunction dated October 4, 1982.

12. On June 24, 1983 after several disputes over the writing of the LRH biography, Mr. Garrison entered into a Settlement Agreement with New Era Publications, the successor corporation to AOSH DK Publications. There is now Produced and shown to me marked "KDL 17" a copy of the

public settlement agreement, in which Mr. Garrison acknowledged that he returned all copies of the materials furnished to him to the Church of Scientology International and that he has no right of possession to any of those materials.

13. Trial was heard on the Church's suit against Mr. Armstrong from May 3, 1984 through June 8, 1984. On June 20, 1984 the trial court issued a Memorandum of Intended Decision which, on July 20, 1984, was held to be the Statement of Decision. As the Court will see, the trial court ruled that the Church had made out a prima facie case against Mr. Armstrong for conversion, breach of confidence, breach of fiduciary relationship and invasion of privacy, but that Mr. Armstrong was justified in having taken the materials. The trial court also ordered certain of the previously sealed exhibits to remain under seal while unsealing the majority of the previously sealed trial exhibits. The trial court also ordered that the documents surrendered to the Clerk of the Court pursuant to the Temporary Restraining Order of August 1982 which had not been introduced during trial were to remain under seal pending trial of a separate suit brought by Mr. Armstrong against the Church. There is now produced and shown to me marked "KDL 18" a true and accurate copy of the Memorandum of Intended Decision dated June 20, 1984. This decision is

currently still on appeal.

14. Following the trial, the Church sought and obtained a series of sealing orders which effectively maintained the sealing of the trial exhibits right up to and including December 1986. There is now produced and shown to me marked "KDL 19" true and accurate copies of the sealing orders. In December 1986, as the result of a settlement agreement reached between the Church and Mr. Armstrong in relation to Mr. Armstrong's cross-complaint, the trial court ordered the documents be returned to the Church. There is now produced and shown to me marked "KDL 20" a true and accurate copy of the December 11, 1986 Order issued by the trial court allowing for the return of the trial exhibits to the Church. The trial exhibits were then returned to the Church without their ever having been made available by the court to the general public for copying.

15. As the Court will see in reviewing "KDL 20", referred to immediately above, the settlement agreement entered into by the Church and Mr. Armstrong did not affect the Church's appeal of the trial court's decision in its case against Mr. Armstrong. In addition to seeking the numerous temporary sealing orders described above following the 1984 trial, the Church had also initiated proceedings to appeal the trial court's July 20, 1984 ruling. That appeal is still pending

with the California Court of Appeal and the action is still very much alive.

16. As stated above I have reviewed the manuscript by Russell Miller entitled "Bare-Faced Messiah". I have also caused to be reviewed certain documents returned to the Church by the court in December 1986 after the settlement with Mr. Armstrong. Mr. Miller's manuscript contains a number of direct quotes taken from these documents which were held under seal by the court.

17. At page 24 of the manuscript, Mr. Miller both refers to information contained in, and quotes directly from, Mr. Hubbard's Boy Scout diary. This diary was never introduced at trial of the action against Mr. Armstrong and so has never been unsealed nor made available to the general public.

18. At pages 45 to 46 of the manuscript, a letter from Mr. Hubbard's mother to Mr. Hubbard is quoted. This document has never been made available to the general public.

19. At pages 81 to 82 of the manuscript, large portions of a letter from Mr. Hubbard to his wife, Polly, are quoted. That letter, which I believe to be dated July 21, 1938, was

taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong, and so has never been unsealed or made available to the general public.

20. At page 90 of the manuscript, a sentence from a one page letter from Mr. Hubbard to the Cape Cod Instrument Company is quoted. That letter was taken by Mr. Armstrong as part of a larger compilation of documents concerning a cruise taken by Mr. Hubbard, and was then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Armstrong, and so has never been unsealed or made available to the general public.

21. At pages 107 to 108 of the manuscript, several sentences written by Mr. Hubbard on January 6, 1944 in a Journal he kept as an officer in the U.S. Navy are quoted. That Journal was taken by Mr. Armstrong and then surrendered to the Clerk of the Court in August 1982. It was never introduced at trial in the action against Mr. Armstrong and so has never been unsealed or made available to the general public.

22. At pages 23 to 25, 29 to 34 and 37 to 45 of the manuscript, numerous passages are directly quoted from three diaries kept by Mr. Hubbard between 1927 and 1929.

These diaries primarily concern several trips made by Mr. Hubbard to the Orient, including Japan, China and Hong Kong. These have never been available to the general public.

23. On page 258 of the manuscript, Mr. Miller both quotes from and gives information from a "Tentative Constitution for Rhodesia", written by Mr. Hubbard. This document has never been available to the general public.

24. Mr. Armstrong testified during a deposition taken on August 1, 1986 that he had met Mr. Miller in approximately May of 1986. Mr. Armstrong indicated that not only did he believe that Mr. Miller had archival documents, but also that Mr. Miller was aware of the litigation arising out of Mr. Armstrong's breach of fiduciary duty to the Church and would have had or read documents about the Church's suit against him in this respect. Mr. Armstrong also indicated that he had furnished Mr. Miller with documents and information, although he did not identify which documents he had provided to Mr. Miller. There is now produced and shown to me marked "KDL 21" a true and accurate copy of Mr. Armstrong's testimony of August 1, 1986 concerning his contact with Mr. Miller.

25. Mr. Miller, by his own admission, is fully aware that the Church issued legal proceedings against Mr. Armstrong

for removal of Mr. Hubbard's confidential documents from the Church while Mr. Armstrong was employed by the Church. Mr. Miller is also fully aware that the Church has appealed the decision of the Los Angeles Superior Court, and that these confidential documents, the contents of some of which Mr. Miller is now seeking to publish, still remained under court seal when he obtained them from Mr. Armstrong.

26. For the reasons stated above, I know that the documents quoted and paraphrased in Mr. Miller's manuscript were not available to him from the court. I also know that Mr. Armstrong refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal. I also know that Mr. Armstrong had contact with Mr. Miller as early as mid-1986. Based on these facts, it is my belief that the documents quoted and paraphrased in Mr. Miller's manuscript were furnished to Mr. Miller by Mr. Armstrong, and that they could not have been furnished to Mr. Miller by anyone else as no-one else other than Mr. Armstrong had access to these documents. Given these facts I am greatly concerned that Mr. Miller may still be in possession of copies of the said documents and may disseminate confidential information contained therein by distributing copies of the said documents to third parties or in some other manner impart the information contained therein to

such third parties.

27. I have read the affidavit written by David Morton Ziff and understand that Mr. Ziff's affidavit states that he witnessed the taking of a photograph of L. Ron Hubbard on the ship "Apollo" in Portugal in 1970. Mr. Ziff attaches to his affidavit a photograph of L. Ron Hubbard and states that the photograph was taken by Sylvia Calhoun, who at the time was employed by the Church as the "LRH Photographer". This unpublished photograph of L. Ron Hubbard is owned by the Church and the negative of the photograph is in the possession of the Church. There is now produced and shown to me marked "KDL 22" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Sylvia Calhoun on the ship Apollo in 1970 as described in the affidavit of Mr. Ziff.

28. There is now produced and shown to me marked "KDL 23" a copy of an advertisement which appeared in the publication "Bookseller", Issue number 4256, dated July 17, 1987. This advertisement depicts the forthcoming book "Bare-Faced Messiah, the True Story of L. Ron Hubbard" and includes a picture of L. Ron Hubbard, which is the same photograph of L. Ron Hubbard marked "KDL 22" which was taken by Sylvia

Calhoun and the copyright in which is owned by the Church as described above. The use of this photograph of L. Ron Hubbard in the advertisement in "Bookseller" is unauthorized and hence an infringement of the copyright in this photograph owned by the Church. I also believe that the photograph of L. Ron Hubbard and design surrounding it in the magazine advertisement in "Bookseller" is a depiction of the front of the dust cover of Russell Miller's forthcoming book. The use of Mr. Hubbard's photograph on the front of the dust cover is likewise unauthorized and an infringement of the Church's copyright in the afore-mentioned photograph of L. Ron Hubbard.

29. I have read the affidavit written by Julie Fisher and understand that Mrs. Fisher's affidavit states that she was one of the individuals who was photographed with L. Ron Hubbard in the Dutch Antilles in late 1974 and early 1975. Mrs. Fisher attaches to her affidavit a photograph of herself, other Church staff and L. Ron Hubbard, and states that the photograph was taken by Maude Castillo, who at the time was employed by the Church as the "LRH photographer". Maude Castillo took this photograph of L. Ron Hubbard in her capacity as a photographer for the Church. The copyright in this unpublished photograph of L. Ron Hubbard is owned by the Church of Scientology of California and the negative of the photograph is in the possession of the Church. There is

now produced and shown to me marked "KDL 24" a copy of a photograph of L. Ron Hubbard which is the same photograph of Mr. Hubbard taken by Maude Castillo in late 1974 and early 1975 as described in the affidavit of Mrs. Julie Fisher and produced there as Exhibit "JT 1".

30. There is now produced and shown to me marked "KDL 25" a copy of a page from Mr. Miller's manuscript. This page includes a photograph depicting L. Ron Hubbard and Church staff, and is the same photograph of Mr. Hubbard marked "KDL 24" that was taken by Maude Castillo and which is owned by the Church as described above. The planned use of this photograph of L. Ron Hubbard by Mr. Miller is unauthorized and hence an infringement of the copyright in this photograph owned by the Church of Scientology of California.

31. The Church has spent thousands of man hours and millions of dollars since 1982 in order to uphold the duty it owed to Mr. Hubbard as the bailee for his materials when they were taken by Mr. Armstrong. If Mr. Miller's manuscript is published with the direct quotations and paraphrases taken from Mr. Hubbard's personal documents, it will completely frustrate the purpose of the appeal by the Church now pending before the Los Angeles Superior Court by making public the very documents whose confidentiality the Church and the Courts have protected for the past five

years.

32. If Mr. Miller is allowed to publish his manuscript containing very personal and intimate details about Mr. L. Ron Hubbard with his photograph referred to in paragraph 29 above as well as the photograph on the dust cover, the buyers may very well at first glance be led to believe that the book has been supported or approved by the Church. Nothing could be further from the truth as the book has been written entirely without the Church's participation.

33. The Church is engaged in the preparations for an official biography of Mr. L. Ron Hubbard. Should Mr. Miller be permitted to use the hitherto unpublished photographs hereinbefore referred to at paragraphs 27 and 29, the Church would be deprived of its first publication rights in respect of the said photographs.

34. If Mr. Miller is allowed to publish the confidential information contained in Mr. Hubbard's personal and private documents, the confidentiality of that information will be forever lost. The Church will be irreparably harmed, without any adequate remedy in monetary terms, as the Court cannot order the bell be unrung once it has been rung, or determine how far the sound has reached.

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35. For the reasons I have set out in paragraphs 33 to 36 above, I verily believe that damages would not be an adequate remedy and I ask this Honourable Court to grant an injunction in the terms sought to restrain publication of Mr. Miller's book.

36. I understand that, under the law of the United Kingdom as well as under the laws of the United States, it is necessary to protect the person against whom an injunction is sought by giving an undertaking to cover any damages that might result should the injunction be issued and later be found to have been wrongly issued. The Church can and will make good any such undertaking of monetary damages that might be required. The last published accounts of the Church show a net worth of approximately \$14,000,000. There is now produced and shown to me marked "KDL 26" a copy of the balance sheet as at November 30, 1986.

SWORN at *Sand Hill*)
Stoner, East Gutter)
Ward Lane)

Kenneth David Long

This *5th* day of *October* 1987

Before me,



S. D. Bird

A Solicitor

RESWORN at *23/23*) *Kenneth David Long*
Fleet Street)
London EC4)
this *7th* day of)
October 1987)

Before me,



A Solicitor:

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EXHIBIT G

Deponent: Kenneth David Long
Deponent's: Second Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No. 6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT

OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:

1. I have been a member of the Church of Scientology for eleven years, and employed by the Church of Scientology of California (hereinafter the "Church") for the past seven years. The Church is a non-profit making religious

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corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I wish to inform the Court at the very outset of this Affidavit that it is not in any way the intention of the Church to prevent the publication of Mr. Miller's book, or the Sunday Times serialisation of Mr. Miller's book. It is, however, the full intention of the Church to prevent publication of the photographs owned by the Church, and the information and documents obtained from the Church as a result of a breach of confidence and in violation of court orders.

3. I have been deeply involved in the litigation of the case of (Church of Scientology of California and Mary Sue) (Hubbard v. Gerald Armstrong), Los Angeles Superior Court case number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

4. As will be made clear for the Court in the paragraphs immediately following, the Church's case against Mr. Armstrong

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involved thousands of documents covering a wide range of subjects. Mr. Armstrong admitted in oral testimony given in August 1982 that he had taken over 5,000 pages of original documents and 5,000 pages of xeroxed copies of documents, all of which originated from the Archives then maintained by the Church of Scientology of California. There is now produced and shown to me marked as "KDL 27" pages 234 to 235 from the deposition of Gerald Armstrong taken on August 18, 1982. As will also be made clear for the Court in the paragraphs immediately following, the vast majority of the documents taken by Mr. Armstrong remained under seal without interruption from September 1982, when Mr. Armstrong and his counsel surrendered said documents into the custody of the Clerk of the Los Angeles Superior Court, until December 1986, when said documents were returned to the Church. Additionally, through the efforts of Church representatives and counsel, the remaining documents likewise remained under seal throughout the same period, and were never available for copying by members of the public.

5. It was the theft by Mr. Armstrong of those documents, which included the boyhood diaries and journals of Mr. L. Ron Hubbard, letters between Mr. Hubbard and his family, correspondence between Mr. Hubbard and his friends and associates spanning over forty years, Mr. Hubbard's military records, and so forth, which formed the basis for the Church's action against Mr. Armstrong on August 2, 1982.

6. On August 24, 1982, the Los Angeles Superior Court issued a temporary restraining order, a copy of which was attached to my previous Affidavit of October 5, 1987 as Exhibit "KDL 15." That temporary restraining order required Mr. Armstrong, his attorneys, agents, and all persons working in concert or participation with him to surrender to the Clerk of the Court all of the materials originating in the Church archives which had been taken by Mr. Armstrong. The order further required that the materials, when surrendered to the Court, be maintained under seal and available only to the parties for use in that litigation only. This temporary restraining order was then superseded, on September 24, 1982, by a preliminary injunction, which was also attached to my prior Affidavit as Exhibit "KDL 16." The preliminary injunction maintained the sealing provisions established by the temporary restraining order.

7. The preliminary injunction remained in full force and effect with respect to all of the documents surrendered by Mr. Armstrong and his counsel until June 20, 1984, following a trial of the case against Mr. Armstrong. Attached to my previous Affidavit of October 5, 1987, as Exhibit "KDL 18," is a copy of the June 20, 1984 Memorandum of Intended Decision. That decision modified the preliminary injunction to the extent that the documents originally surrendered to the Clerk of the Court by Mr. Armstrong and his counsel became divided into two separate categories -- those documents introduced into evidence during the trial of the action, and those

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documents which were not introduced into evidence and which remained in the possession of the Clerk of the Court.

8. The Memorandum of Intended Decision ordered that the documents which had not been introduced into trial remain under seal in the possession of the Clerk of the Court, effectively maintaining the terms of the preliminary injunction with respect to these documents. The Memorandum of Intended Decision also ordered that approximately 175 of the nearly 200 exhibits introduced during the trial from the documents held under seal were to be treated in the same fashion as other Superior Court trial exhibits, i.e., they were to be considered matters of public record and available for inspection by the public.

9. However, on June 25, 1984, and before any of the unsealed trial exhibits could be made available to the public, the Church and Mrs. Hubbard sought and were granted a stay of the trial court's order, thereby preventing the trial exhibits from becoming available for public inspection. A copy of that order staying the unsealing is attached to my previous Affidavit as Exhibit "KDL 19." Between the end of trial on June 8, 1984, and the issuance of the temporary stay on June 25, 1984, I caused a watch to be maintained over the area in the courthouse wherein the trial exhibits were stored to ensure that no one, other than trial court personnel, had access to said materials. Additionally, I later personally confirmed with Ms. Rosie Hart, the clerk for the Honorable Paul Breckenridge Jr., the trial judge for the Church's case

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against Mr. Armstrong, that none of the trial exhibits were made available to anyone at any time prior to the issuance of the temporary stay order of June 25, 1984.

10. Thereafter, between June 25, 1984 and December 3, 1984, the Church and Mrs. Hubbard sought and obtained a series of orders which maintained the seal of the trial exhibits until December 19, 1984. Copies of the relevant orders sought and obtained are attached to my previous Affidavit as Exhibit "KDL 19." On December 19, 1984, and until approximately midday on December 20, 1984, the trial exhibits were made available for inspection by members of the public. I was present in court on both days, as were several hundred or more other Scientologists who were outraged that the personal and private papers of Mr. Hubbard were going to be made available for public inspection. I personally observed that, with the single exception of a reporter from the United Press International, no member of the public other than the Scientologists who were permitted to see the trial exhibits. I further observed that no member of the public, including the reporter or any of the Scientologists who did inspect the exhibits, obtained copies of any of the exhibits from the court. The court simply did not permit any of the exhibits to be copied.

11. On December 20, 1984, the Honorable Judge Lawrence Waddington issued a temporary restraining order in the case of (Roes 1 through 200 v. Superior Court of the State of)

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{California for the County of Los Angeles}, Los Angeles Superior Court case number C 527556, an action taken to reseal the trial exhibits by individuals who were named or otherwise identified in said exhibits. Immediately upon the issuance of the said temporary restraining order, a copy of which is attached to my previous Affidavit as Exhibit "KDL 19," the public inspection of the trial exhibits was halted. Thereafter, no further public inspection of the trial exhibits was ever allowed by the court, and I have personally confirmed with the court personnel responsible for the caretaking of the exhibits that absolutely no inspection or copying of the trial exhibits was allowed. The final order, which maintained the seal on the trial exhibits until they were returned to the Church in December 1986, is also attached to my previous Affidavit in Exhibit "KDL 19." That order, dated January 26, 1985, was issued by the California Court of Appeal in the {Roes} case following the denial of the Roe plaintiffs' application for preliminary injunction.

12. In summary, as this Court can see from the above facts, two of the aforementioned court orders pertaining to the sealing of the confidential materials are especially relevant to the instant action involving Penguin Books Limited and Mr. Miller. The first is the preliminary injunction of September 24, 1982, which is the applicable order for all documents surrendered by Mr. Armstrong and his counsel which were not then later introduced during the May and June 1984 trial of the Church's case against Mr. Armstrong. The second

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is the January 26, 1985 stay order issued by the California Court of Appeal in the (Roes) case, which is applicable to the documents introduced during the trial of the Church's action against Mr. Armstrong. Due to these two court orders, all of the documents remained under seal at all times relevant to this present litigation. No copies of any of said documents could have been obtained from the Los Angeles Superior Court.

13. In my First Affidavit, at paragraphs 16 through 23, I referred to a number of passages in Mr. Miller's book which directly quote from the documents originally taken by Mr. Armstrong and which are now at issue in the instant litigation. As the Court will note in reviewing the passages raised herein, however, there is far more at issue than simply the direct quotes. In many instances, Mr. Miller has gone far beyond merely quoting from the documents and, instead, has based much of his writing on information taken from the documents. For example, although pages 29 through 39 of Mr. Miller's book contain a great many direct quotes from Mr. Hubbard's boyhood diaries, those same pages are also almost wholly based on the information in the said diaries even where not directly quoted.

14. I have reviewed the unsworn Affidavit of Jonathan Caven-Atack in which he makes various statements concerning the status of the documents at issue in this matter.

15. At paragraph 3 of Mr. Caven-Atack's Affidavit, I note that he claims to have obtained "copies of the majority of the

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released exhibits from the Superior Court of the State of California." For the reasons set forth in more detail hereinbelow, I believe that Mr. Caven-Atack's statement is nothing more or less than a willful and knowing perjury to this Court.

16. In support of my statement, I respectfully request the Court to review paragraph 10 of Mr. Caven-Atack's Affidavit. In said paragraph, Mr. Caven-Atack describes three diaries authored by Mr. L. Ron Hubbard between the years 1927 and 1929. Mr. Caven-Atack explicitly states that the diaries were introduced during the trial of the Church's case against Mr. Armstrong in 1984 as trial exhibits 62, 63 and 65. He further attaches copies of said diaries to his Affidavit as Exhibit JC-A 4.

17. As the Court will note for itself in reviewing Exhibit JC-A 4, none of the three diaries demonstrates the exhibit marking of the Los Angeles Superior Court. Instead, each diary demonstrates a number written by hand on the first page.

18. I was present during each day of the trial against Mr. Armstrong in May and June, 1984. I recognize the handwritten denotations of the numbers "62," "63" and "65" as having been placed on the diaries by Church counsel Robert Harris just before handing the diaries to the trial court and Mr. Armstrong's counsel as exhibits.

19. I have detailed for the Court hereinabove the

various orders issued by the courts in the United States which maintained these diaries under seal until they were returned by the court to the Church in December 1986. The Second Affidavit of Timothy Bowles, at paragraph 14, likewise states that no copies of any of the trial exhibits, which would specifically include the diaries, were ever available to any member of the public such as Mr. Caven-Attack, from the Los Angeles Superior Court.

20. Based on the above facts, I am certain that the (only) possible source for the diaries attached by Mr. Caven-Attack as Exhibit JC-A 4 is Mr. Armstrong and/or his counsel. Had Mr. Caven-Attack actually obtained said copies from the Los Angeles Superior Court, as he claims at paragraph 3, the said copies would demonstrate the exhibit marking of the Superior Court. I am also certain, as a matter of logical necessity flowing from the above facts, that Mr. Caven-Attack has willfully and knowingly perjured himself before this Court.

21. At paragraph 5 of Mr. Caven-Attack's Affidavit, he further avers that he did not at any time receive any sealed documents from Mr. Armstrong or counsel for Mr. Armstrong. However, as set forth hereinabove, the copies of the diaries attached as Exhibit JC-A 4 were given only to Mr. Armstrong and his counsel. The sole source for those copies is therefore obviously and only Mr. Armstrong or his counsel. Mr. Caven-Attack met with Mr. Armstrong in the United Kingdom at least in June 1984, if not also on other occasions. There is

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now shown and produced to me marked as "KDL 28" a copy of pages 260 to 262 from the oral testimony of Gerald Armstrong of July 31, 1986, in which he states that he met with Mr. Caven-Attack in the London area on several occasions in or about June 1984. I note that Mr. Caven-Attack avoids any mention in his Affidavits of having met with Mr. Armstrong, and that he likewise does not deny having received any documents from Mr. Armstrong. Interestingly enough, Mr. Caven-Attack also mentions nowhere that he ever went to the Los Angeles Superior Court. In view of the facts already set forth hereinabove, Mr. Caven-Attack's statement is either an additional perjurious statement made to this Court or an attempt to avoid the truth through word games.

22. At paragraph 8 of the Affidavit of Mr. Caven-Attack, he states that the letter from Mr. Hubbard's mother to Mr. Hubbard of September 30, 1929 was introduced as an exhibit during the trial of the Church's case against Mr. Armstrong. I note that Mr. Caven-Attack does not contest the statement made in my First Affidavit at paragraph 18, in which I stated that the letter has never been made available to the general public. My statement is true, as has been demonstrated to the Court through my summary of the orders maintaining the trial exhibits effectively under seal until their return to the Church in December 1986. I further note that Mr. Caven-Attack does not deny that he has a copy of said letter, and that he has failed to attach a copy of said letter to his Affidavit as an exhibit.

23. I have reviewed the statements made by Mr. Caven-Atack in paragraphs 7, 9 and 10 of his Affidavit, concerning Mr. Hubbard's Boy Scout Diary, Mr. Hubbard's letter to the Cape Cod Instrument Company, and a single one of the three boyhood diaries authored by Mr. Hubbard between 1927 and 1929. As a result of my review, I do agree that a few pages from Mr. Hubbard's Boy Scout Diary, the letter to the Cape Cod Instrument Company, and a portion of one of Mr. Hubbard's three diaries previously discussed hereinabove, were actually available to the public from the Church, and were mistakenly brought before the Court through a clerical error. However, in light of Mr. Caven-Atack's apparent disregard for the truth, as additionally evidenced, for example, by the fact that there was no showing of the Boy Scout diaries in Toronto in October 1986, I have reached this conclusion only after having verified for myself the truth of the matter.

24. At paragraph 10 of Mr. Caven-Atack's Affidavit, concerning three diaries authored by Mr. Hubbard between 1927 and 1929, Mr. Caven-Atack states that the three diaries were introduced during the trial of the Church's case against Mr. Armstrong in May and June, 1984. I agree with Mr. Caven-Atack's assertion. Indeed, the Church has not stated any differently. However, I also respectfully refer the Court to the discussion hereinabove concerning the various court orders which maintained these documents under seal. Despite Mr. Caven-Atack's assertion, the documents were not publicly available from the Los Angeles Superior Court, and he could

not have obtained copies therefrom.

25. At paragraph 11 of Mr. Caven-Atack's Affidavit, he refers to a list of exhibits unsealed during the trial of the Church's case against Mr. Armstrong, and concludes that the letter from Mr. Hubbard to his wife, Polly, was not introduced into said trial at any time. Although I know of no such list as that referred to by Mr. Caven-Atack, his conclusion is accurate. I note that neither Mr. Caven-Atack nor Mr. Miller have denied that the information in this letter arises from the documents maintained under seal from September 1982 until December 1986, and I further note that neither Mr. Miller nor Mr. Caven-Atack have attempted to explain how they came into possession of said letter.

26. I have reviewed the Affidavit of Russell Francis Miller, sworn to on October 3, 1987. In doing so, I have noted that Mr. Miller states at paragraph 10 that he obtained much of the information at issue herein from Mr. Caven-Atack. Mr. Miller also avers that he was informed by Mr. Caven-Atack that some of the documents had been used in connection with the litigation between the Church and Mr. Armstrong, but that he was informed by Mr. Caven-Atack that some of the documents, although not all of them, which were used in connection with the litigation had been unsealed. As I have set forth for this Court in the paragraphs immediately hereinabove, and in my First Affidavit, the documents were neither left unsealed nor were they ever available for Mr. Atack to publicly inspect or

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under seal pursuant to the preliminary injunction of September 24, 1982 until returned to the Church in December 1986. It is not surprising that Mr. Miller would not divulge his source since that individual is in violation of the court order of September 24, 1982.

29. At paragraph 22 of Mr. Miller's Affidavit, he indicates that his source for the information contained in his book concerning Mr. Hubbard's 1927 to 1929 diaries was Jon Attack. Said diaries were introduced during the May to June 1984 trial between the Church and Mr. Armstrong. As this Court has been informed hereinabove, the trial exhibits were maintained under seal through various stay orders, and particularly the stay order issued by the California Court of Appeal on January 26, 1985. At no time were copies of the said diaries provided to Mr. Attack or anyone else by the Los Angeles Superior Court.

30. I have reviewed and caused to be verified Mr. Miller's statements in paragraph 23 of his Affidavit. Mr. Miller's statement is highly suspect since he chose not to support said statement by attaching a copy of his request to the CIA. A copy of the document was introduced during the trial of the Church's case against Mr. Armstrong, and was maintained under seal pursuant to sealing orders described hereinabove, and particularly the stay order of January 26, 1985 issued by the California Court of Appeal.

31. Although not previously brought to this Court's

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attention, and also based on information taken from documents held under seal pursuant to the preliminary injunction order of September 24, 1982, Mr. Miller's book includes three letters from Mr. Hubbard to Helen O'Brien in 1953. The first of these letters appears at page 213 of Mr. Miller's book, in the second complete paragraph, and concerns Mr. Hubbard's feelings about a former associate, Don Purcell. The letter is directly quoted, in part, by Mr. Miller. The second letter, which also contains direct quotations as well as information from the letter, appears at the last incomplete paragraph on page 213 and the first incomplete paragraph on page 214 of Mr. Miller's book. The third letter appears in the first complete paragraph on page 214 of Mr. Miller's book, and is again both directly quoted from as well as used as the basis for additional information imparted by Mr. Miller. All three of these letters were surrendered to the Clerk of the Court by Mr. Armstrong and his counsel in September 1982, and all remained under seal until they were returned to the Church in December 1986. Mr. Miller's inclusion of the information cited herein clearly shows additional breaches of confidence and violation of the orders issued by the California courts.

32. Based on the above information now furnished to this Court, I am certain that Mr. Miller has used information which could only have originated from Mr. Armstrong. I further believe that Mr. Miller recognized that his obtaining and use of that information was a perpetuation of the breach of confidence initiated by Mr. Armstrong, and that Mr.

Caven-Atack's claim to have obtained the documents from the Los Angeles Superior Court has been made with the knowledge that it is utterly false.

33. At paragraph 5 of his Affidavit sworn to on October 3, 1987, Mr. Miller describes what he terms was a "hostile reaction" from the Church when he informed it that he intended to write a book about Mr. Hubbard's life. Although his statements are irrelevant to the issues herein, and apparently included only to cast a bad light over the Church, I wish to inform this Court that the Church initially met with Mr. Miller and, in fact, agreed at one point to assist Mr. Miller in the research for his book. It was only after Mr. Miller's actions revealed his true intentions were to author a book that was biased and one-sided, contrary to his earlier undertaking that the book would truly be factual, that the Church refused to cooperate with him.

34. Mr. Miller's additional statements in paragraph 5, concerning the persons whom he was interviewing, also appear by their very lack of specificity to be designed to impugn the Church. The Court should be aware that such persons, the sources for Mr. Miller's book, are almost one for one former Scientologists who are now hostile to the Church and to Mr. Hubbard. Hana Eltringham Whitfield, for example, is quoted rather extensively by Mr. Miller throughout the latter portion of the book. Yet he fails to mention at any point that Mrs. Whitfield is attempting to extort millions of dollars from the

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Church by filing a purported class action suit in the United States which has been thrown out of court three times, and in which Mrs. Whitfield and the other plaintiffs have been sanctioned by the court. There is now shown and produced to me marked as "KDL 28" a copy of the Court's order of September 24, 1987, dismissing the purported class action suit for the third time.

35. At paragraph 30 of his Affidavit, Mr. Miller attempts to raise the spectre that a granting of the injunction requested by the Church would adversely affect the serialisation of Mr. Miller's book by the Sunday Times. This is not the case. As I stated in paragraph 2 hereinabove, the Sunday Times is free to publish a serialisation of Mr. Miller's book as long as it does so without violating the rights of the Church. In order to ensure that the rights of all parties are made known and thereby preserved to each, the Church's solicitor has forwarded a letter to the Sunday Times, placing it on notice of the current undertaking by the Defendants herein. The letter additionally reminds the Sunday Times of its undertaking of January 14, 1970, in which it agreed not to publish any of the allegations now raised by Chapter 7 of Mr. Miller's book. There is now shown and produced to me marked as "KDL 29" a copy of the October 5, 1987 letter sent by Mrs. Hamida Jafferji, solicitor for the Church, to the Sunday Times. There is also now shown and produced to me marked "KDL 30" a copy of the October 5, 1969 article entitled "The Odd Beginning of Ron Hubbard's Career,"

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which article contains the statements prohibited by the aforementioned undertaking.

36. I have reviewed the unsworn first Affidavit of Julie A Scott-Bayfield, who describes at paragraph 2 an incident involving the copying of a xerox of Mr. Miller's book. Although the information imparted by Mrs. Scott-Bayfield is completely irrelevant to the issues in this case, I respectfully differ with her statement that the manuscript being copied by the Church representative is confidential to the Defendants. I have been informed that Penguin Books Limited have disseminated copies of the manuscript copied to persons in at least four separate countries -- the United Kingdom, the United States, Canada and Germany -- and that a person affiliated with the publisher furnished a copy of the manuscript to an individual who then furnished the copy to representatives of the Church. This individual has requested and was promised that he will not be identified due to his fear that he will be harassed or will otherwise be subjected to unpleasant actions by Mr. Miller or Penguin Books Limited for his assistance to the Church. The copy of the manuscript being copied was obtained in a completely legitimate manner. The copies were made solely for use in the present legal proceedings and, as I have been informed by counsel for the Church, therefore are specifically excluded from copyright infringement under the Copyright Act of 1956.

37. At paragraph 3 of the Affidavit of Julie A Scott-Bayfield, she alleges that one of the two photographs

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for which relief is sought by the Church is not actually owned by the Church. Mrs. Scott-Bayfield's statement is extended hearsay, as she is merely repeating information passed on to her by a Doreen Gillham, who, in turn, apparently obtained at least some of the information from a Larry Miller. However, leaving this aside, even if Mrs. Scott-Bayfield's explanation is accepted as true, the Church still has ownership of the photograph. The Church does not accept the claim that the photograph was taken by Mr. Miller, and actively contests that claim. Further, I have caused the records of the Church to be searched, and aver thereon that Mr. Miller was employed by the Church as a photographer. Even if the photograph was actually taken by Mr. Miller, it was taken by him pursuant to his employment as a photographer for the Church, and was and is owned by the Church. The negative is contained in the Church archives, and it is self-evident that Mr. Miller's copy of the photograph was made from another photograph rather than from the negative. Ms. Gillham's memory of events concerning the photograph is additionally suspect in that Julie Fisher was, at the time the photograph was taken, actually fourteen years of age and not ten or eleven as alleged by Ms. Gillham. Interestingly enough, Ms. Gillham herself was only seventeen at the time the photograph was taken. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAu 116-627.

38. I have reviewed the Affidavit of Glen Keith Marks,

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sworn to on October 3, 1987. I have also reviewed the Affidavit of Michael Roy Garside, sworn to on October 5, 1987. Based on the matters stated therein, I verily believe that Rex Features Limited was not furnished with a copy of the photograph used on the dust jacket for Mr. Miller's book. I further believe that, even if such were the case, the Church did not relinquish or waive its copyright in the photograph; certainly no representative of the Church who met with Rex Features Limited was authorized to furnish such a waiver. I have caused the records of the Church to be searched and, as a result, I verily believe and do aver that the photograph used on the dust jacket of Mr. Miller's book has always been maintained in the archives of the Church, and that it has never been published or disseminated by the Church. This photograph is registered in the United States Copyright Office to the Church of Scientology of California, with a registration number of VAU 116-426.

SWORN at Saint Hill House
East Grinstead, West
Sussex

Kenneth David Long

This 5th day of October 1987

Before me,

[Signature]
Solicitor

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Deponent: Kenneth David Long
Deponent's: Third Affidavit
Sworn on 5th October 1987
In Support of Plaintiff

IN THE HIGH COURT OF JUSTICE

1987 C No. 6140

CHANCERY DIVISION

B E T W E E N :

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA

(Plaintiff)

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED

(Defendants)

AFFIDAVIT

OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the

Legal Division of the Church of Scientology of California,

do hereby MAKE OATH and say as follows:

I have been a member of the Church of Scientology for

eleven years, and employed by the Church of Scientology of

California (hereinafter the "Church") for the past seven

years. The Church is a non-profit making religious

corporation registered in California since 1954. My duties for the past five years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have read the final draft of Russell Miller's upcoming book entitled "Bare-Faced Messiah," a purported biography of Scientology founder, L. Ron Hubbard.

3. The main sources of information for Mr. Miller's biography of Mr. Hubbard appear to be Jonathan Caven-Atack and Gerald Armstrong. As demonstrated in my First and Second Affidavits of October 5, 1987, Mr. Miller's and Mr. Caven-Atack's claims that they obtained documents concerning Mr. Hubbard and the Church from public sources, including the Los Angeles Superior Court, are overwhelmingly false. In an unsworn affidavit, Mr. Caven-Atack seeks to distract this Court from his obvious contempt and violation of United States court orders by a parade of irrelevant, disjointed and conclusory diatribe, including accusations of criminal activity. This is indeed an interesting turn.

4. Upon information Mr. Caven-Atack, prior to joining the Church of Scientology as a parishioner, had a record of drug use and drug pushing, including two convictions for possession of drugs. In fact, Mr. Caven-Atack credited the religious counseling procedures of Scientology with assisting him in kicking his drug habit, during the time he was a member of the religion. There is now produced and shown to me marked

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"KDL 31" a petition written by Mr. Caven-Atack. In said petition, he requested to be allowed to become an employee of the Church of Scientology in Manchester, England, and details his involvement with drugs. Due to the policy of the Church whereby an individual with a criminal background is not allowed to work as a member of Church staff, Mr. Caven-Atack was denied employment by the Church, although he was not denied membership in the Church nor its help in keeping him off drugs.

5. In 1983 Mr. Caven-Atack resigned from his membership in the Church. Thereafter, in late 1983, there was a theft of sacred and confidential Church scriptures from a Church of Scientology in Copenhagen, Denmark, by three British citizens -- Ron Lawley, Robin Scott and Morag Bellmaine. Mr. Scott was subsequently arrested for the theft and convicted in Denmark. There is now produced and shown to me marked "KDL 32" a copy of the English High Court order enjoining the possession, use and distribution of the stolen Church scriptures.

6. In 1984, Mr. Caven-Atack received a copy of the stolen materials from Ron Lawley, made himself a copy of the materials, and sent them to Larry West, a citizen of California, U.S.A. There is now produced and shown to me marked "KDL 33," excerpts from the transcript of the oral testimony of Martin Ruston, taken in the United States, which describe the part Mr. Caven-Atack played in the illicit distribution of the scriptures stolen from the Church in

violation of the English court order.

7. It thus does not surprise me that Mr. Caven-Atack would maliciously and deliberately engage in all manner of irrelevant and highly prejudicial mud-throwing at the Church of Scientology, given his own documented background as a drug pusher, purveyor of the Church's stolen and confidential religious scriptures and, as set forth in my First and Second Affidavits, possessor of other documents belonging to the religion's founder in violation of United States court orders. Given the discreditable background and dubious motives of Mr. Caven-Atack as regards a Church which opposes the use of drugs, opposes crime, and which extended to Mr. Caven-Atack its help regardless of his past transgressions, it is obvious to me that the evidence he gives should be recognized for what it is and disregarded.

8. Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in Church files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity.

9. The evidence is irrefutable that the great majority of these biographical documents were obtained by Mr. Caven-Atack and Mr. Miller in violation of court sealing orders. As such, the allegation of "unclean hands" in contexts entirely unrelated to the facts at issue here has as its only purpose to distract and inflame this Court into

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denying the relief which the Church is seeking.

SWORN at *Saint Hill Manor*
East Grinstead, West
Sussex

Kenneth David Long

This 5th day of October 1987

Before me,


S.M. BIRD.
S.M. Bird

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Deponent: Sheila Macdonald Chaleff
Deponent's First Affidavit
Sworn on 5th October, 1987
In Support of the Plaintiff

IN THE HIGH COURT OF JUSTICE

1987 C No. C140

CHANCERY DIVISION

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

-- and --

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED. Defendants

AFFIDAVIT OF
SHEILA MACDONALD CHALEFF

I, SHEILA MACDONALD CHALEFF, of Saint Hill Manor, East Grinstead, Sussex, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for the past 27 years. I have been employed by various Church of Scientology corporations for 17 years and am presently the Director of the Office of Special Affairs for the United Kingdom.

2. In 1985 Mr. Russell Miller approached the Church indicating

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and was involved in distribution of materials stolen from the Church of Scientology. Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church. These are the same two individuals that Mr. Miller used to obtain the documents he used in his book.

8. On 11 August 1987, BBC Radio 4 aired a programme regarding L. Ron Hubbard and the Church of Scientology. This programme was researched and presented by Margaret Percy. After the airing of this programme, Mr. Atack wrote a letter to the "Radio Times" criticising Ms. Percy's programme even though he was a consultant to the programme. There is now produced and shown to me marked "SMC 2" a copy of Mr. Atack's letter to "Radio Times" with Ms. Percy's response.

9. The integrity of Mr. Miller and his sources of the documents in question are at best suspect. I have no doubt that the documents involved in this litigation were obtained in breach of court orders and the confidential relationship between the Church and Mr. Armstrong.

SWORN at
Saint Hill Manor
Great Gonerley
West Sussex
on the 5th day of October
Before me,
J. M.

Shula Chaff

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EXHIBIT J

Deponent: Kenneth David Long
Deponent's Fourth Affidavit
Sworn on 7th October 1987
In support of Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No.6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA Plaintiff

- and -

(1) RUSSELL MILLER

(2) PENGUIN BOOKS LIMITED Defendants

AFFIDAVIT
OF KENNETH DAVID LONG

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. I have been a member of the Church of Scientology for 11 years, and a member of the Church's staff for 7 years. I am employed by the Church of Scientology of California (hereinafter called "the Church") which is a non-profit

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making religious corporation registered in California since 1954. My duties for the past 5 years have required that I work closely with and assist Church counsel in all phases of litigation in the United States.

2. I have been deeply involved in the litigation of the case of "Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong", Los Angeles Superior Court cases number C 420153, since the inception of that litigation on August 2, 1982. During the course of my participation in that litigation, I personally inventoried the materials surrendered pursuant to court order to the Clerk of the Los Angeles Superior Court in September 1982 by Gerald Armstrong and his counsel. I also attended almost every deposition and/or pre-trial proceeding held in that case, and was present as an assistant to counsel throughout each day of the trial proceedings in May and June, 1984.

3. While attending proceedings held in the instant matter on Tuesday, October 6, 1987, I noted that the Court seemed to have additional questions concerning the status of the documents in the Armstrong case, and the relationship of the documents in issue herein to said status. Responses to the court's questions, to the content I have discerned them, follow hereinbelow.

4. The bottom line I wish to communicate is this: None of the

1986 were these 9,000 documents available to the general public, or considered to be in the public domain. This fact is very important since four of the seven documents at issue herein were contained in these 9,000 documents which remained under seal at all times. There is no legal way that Mr. Armstrong, Mr. Miller and/or Mr. Newman could have possession of these materials.

8. Trial ended in the Armstrong case on June 8, 1984. Between June 8 and June 20, 1984, the 200 exhibits were held by the trial judge unavailable to anyone else, for his use in writing the Memorandum of Intended Decision. No one other than court personnel had access to those 200 exhibits. I know this to be fact since I both maintained a watch over the area where the documents were kept and verified with Ms. Rosie Hart, the trial court's clerk, that no one was allowed access to these documents. In issuing the Memorandum of Intended Decision, the trial court ordered that 22 of the 200 exhibits were to remain sealed. Those exhibits joined the other 9,000 documents, leaving just approximately 178 exhibits affected by the following events.

9. On June 25, 1984, the first of what was to be a series of orders temporarily staying the unsealing of the trial exhibits was issued by the California court of Appeal. Please note Exhibit "KDL 19" attached to my first Affidavit. In addition, there is now produced and shown to me marked "KDL 34", a chronological History of Major Armstrong Case Orders, which :

have personally prepared to assist counsel and the court.

10. In reviewing Exhibit "KDL 34" attached hereto, the Court will no doubt note what appear to be "windows," or gaps between the vacating of one order and the issuance of the next. These "windows" are far more apparent than they were real. To begin with, I maintained, along with my staff, a daily check with each court in which a temporary stay order was pending in order to ensure that I learned the minute a ruling was issued. So before the trial court received any order vacating a sealing order, the Church obtained another order sealing them up again. In actuality, it took 3-5 days for the trial court to receive a vacating order from the Higher Court and before receipt I would personally hand deliver a new stay order. In addition, I also had my staff maintain a watch over the area of the court where these documents were kept during each so called "window" period and no one viewed and/or copied the materials.

11. There was just a single incident when the 178 trial exhibited were made available for public inspection, on December 19, 1984 and until midday on December 20, 1984. This occurred after an injunction issued by the Ninth Circuit Federal Court of Appeals expired, and was then halted by the issuance of a temporary restraining order on December 20th in the "Roes" case, previously described in my Second Affidavit. I was physically present at the court during the entire time that the documents

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were available for inspection by the public. I personally observed that, with the exception of a UPI reporter who was allowed only to view some of Mr. Hubbard's military records for no more than 30 minutes, only Scientologists obtained access to see the 178 trial exhibits. Additionally, I personally observed and then verified with court personnel that no one, including the reporter, were permitted copies of any of the exhibits. People were permitted to view the documents only and not copy them.

12. Following the issuance of the "Roes" order on December 20, 1984, the 178 trial exhibits were never again unsealed. These 178 trial exhibits, the other trial exhibits which had been left sealed throughout, and the 9,000 documents never entered into the trial, were then returned to the Church in December 1986.

13. As is clearly shown by the above events, no one was ever able to obtain copies of any of the 10,000 documents from the trial court. This fact is the basis for my statements, in my Second Affidavit, that Mr. Caven-Atack has perjured himself to this Court by claiming, in a sworn Affidavit filed herein, that he obtained copies from the court. Mr. Caven-Atack's obvious lack of specifics in his affidavit emphasizes this. Suspiciously left out of his affidavit are the facts supporting Mr. Caven-Atack's claim that he obtained the documents from the California court. Nowhere does Mr. Caven-Atack state when he was in California, when he went into the court, signed the visitor's sign-in log and the details of the actual copying. Mr. Caven-


Atack is silent on these points obviously because he never went to the court as verified by my conversation with the court clerk and my review of the visitor's sign-in log. There can be no doubt that the documents in issue herein, no matter through whom they were funneled to Mr. Miller, originated from Mr. Armstrong, in violation of court orders.


14. I have reviewed the Second Affidavit of Russell Francis Miller, relating to certain letters from Mr. Hubbard to one Helen O'Brien during 1953. The letter discussed by Mr. Miller at paragraph 3 of his affidavit is not at issue in this action, it is neither listed in the amended writ filed herein nor mentioned in my Second Affidavit precisely because, as Mr. Miller understands, it is a matter of public record. Mr. Miller attempts to create confusion with this Court by the inclusion of this particular letter.

15. At paragraph 4 of his Second Affidavit, Mr. Miller references three other Helen O'Brien letters which are at issue herein and states he obtained copies of these letters from Mr. Ron Newman. These three letters are part of the 9,000 documents which remained under seal in the court at all times and were returned to the Church in December 1986. Mr. Ron Newman nor anyone else could have legal possession of these letters since they could not have been obtained from the Court. It is interesting that Mr. Miller has "no idea" where Mr. Newman

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obtained these letters, an important fact which would obviously be of interest to any researcher, author or anyone else receiving these documents. Gerald Armstrong was the only person that had these letters and he knowingly violated several court orders - the ^{August DL} ~~September~~ 24, 1982 court order to turn in all materials to  the court and the June 20, 1984 court order sealing the documents. He obviously didn't keep them sealed since Mr. Newman and Mr. Miller have copies and he didn't turn in all copies of the letters when ordered, since as a condition of settlement Mr. Armstrong turned in any materials he had concerning LRH or the Church. I personally inspected the documents he turned in in January 1987 and among them were the three Helen O'Brien letters, letters that he was ordered to turn into the court.

16. In order to clarify for the Court the exact status of each of the documents at issue herein, I have prepared a short Summary of said documents. There is now produced and shown to me marked "KDL 35" a copy of said Summary. As the Court will note, four of the documents in issue - the three O'Brien letters referred to hereinabove and Mr. Hubbard's letter to Polly - have never been trial exhibits. They have remained under seal at all times. Three of the documents - two of Mr. Hubbard's boyhood diaries and the letter to Mr. Hubbard from his ^{mother KDL} ~~more~~ were Armstrong trial  exhibits, but have also remained under seal as shown by the attached Chronological History of Court Orders. The only source for these documents, was not the trial court but Gerald Armstrong

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himself.

SWORN at 23/28)
Fleet St, London)
EC4)
)

Ken... the ...

This 7th day of October 1987

Before me,

Mark W. L. Cookley

*Mark Cookley
FRIENDS of the
Suffragan Bishop*

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5th. : K.D. Long
Plaintiff
Sworn on 8th October 1987

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

1987 C No. 6140

B E T W E E N :

CHURCH OF SCIENTOLOGY OF CALIFORNIA

Plaintiff

-and-

- (1) RUSSELL MILLER
- (2) PENGUIN BOOKS LIMITED

Defendants

A F F I D A V I T

I, KENNETH DAVID LONG of 1301 North Catalina, Los Angeles, California 90027, United States, an Executive employed in the Legal Division of the Church of Scientology of California, MAKE OATH and say as follows:-

1. This affidavit is supplemental to my previous affidavits filed with this Court.
2. I have read Jonathan Caven-Atack's Third Affidavit and Mr Miller's supplemental affidavit filed with this Court yesterday, October 7, 1987.

3 Mr Caven-Atack conveniently changes his testimony of his previous affidavits and now states that he received copies of the documents from a Brenda Yates who had been given the task of making photocopies of documents in possession of Mr Armstrong's lawyer.

4 Mr Miller in his supplemental affidavit now claims, at this late hour, that he "misunderstood" how Mr Caven-Atack obtained copies of the documents. These inconsistent and last minute changes are simply an attempt to create confusion and doubt with this Court.

5 Mr Caven-Atack and Mr Miller's latest affidavits lack, as did their previous affidavits, specific facts. They still fail to identify which documents were obtained from Mrs Yates. Also, they still remain silent regarding how they obtained the documents that remained sealed during the entire course of the Armstrong trial and were never made exhibits.

6 I have read the affidavit of Earle C. Cooley dated October 8, 1987. In regard to paragraph 4 of this affidavit, I can say, based on my being in Court every day of the Armstrong trial, that none of these documents in question in this case were publicly available during the course of the trial. There were over 100 exhibits that were publicly available and not subject to any sealing order but none of these documents are included in this case and none

of them were LRH archive documents. The truth is that the documents in question were sealed throughout the entire Armstrong trial and remain sealed to this day.

7. Produced and shown before me now is exhibit "KDL 36" a true and correct copy of the affidavit of Gerald Armstrong of March 7, 1986. Mr Armstrong himself testified the following: "CSC (Church of Scientology California) sued me in August 1982 in the Los Angeles Superior Court and the documents I had sent my attorneys were ordered to be delivered to the Court where they were put under seal. Mary Sue Hubbard entered the case, hereinafter referred to as (Armstrong), as Plaintiff in Intervention in late 1982. The case went into trial in 1984 and several of the sealed documents were admitted into evidence as defense exhibits 500A-500JJJJJJJ. A Judgment was entered in my favour. The exhibits and other biography documents remain under seal pending the outcome of an appeal taken by plaintiff."

The appeal referred to by Mr Armstrong is still pending in California.

8. During the course of the Armstrong trial and up until this day the Armstrong documents have been effectively under seal and protected by various Court Orders in the United States. Mr Flynn was permitted by the trial Court to use the documents only for the purpose of the Armstrong case and only during the pendency of those proceedings. The trial

court, in a 23 April 1984 hearing, specifically stated how these documents were to be treated:

"MR LITT: (Church attorney) We would also like -- Mr Flynn has not had access to these documents, assuming that the Court is now allowing him to go into them, we also would like an order that requires that he has seen these materials under seal. He may not disclose the materials or the contents of the materials for any purpose outside of the use in this proceeding. That is the order that exists presently with respect to Counsel.

"THE COURT: I don't have any problem with that, at least until the Court decides what to do with these exhibits."

"MR FLYNN: I essentially have no quarrel with that."

The Court also stated:

"THE COURT: Well, I will accept the representation by Mr Flynn that he is not going to do anything of an untoward (sic) nature that would violate the theory and the principles of what we are trying to deal with here. He is subject to the protective order.

"... and he is not to -- during the pendency of these proceedings, until further order discuss or disseminate to

other people, other than people like his client or in Court here, matters contained in the sealed records which were not in the public domain before Mr Armstrong first went to Mr Flynn or Miss Dragojevic, her firm."

9. Produced and shown before me now is exhibit "KDL 37", a July 31, 1986 declaration of Mr Michael Flynn filed in another Church case. In the case, Mr Flynn was being accused of giving out Armstrong documents to a media outlet.

Mr Flynn stated:

"In this case, of course, when we do not possess the (Armstrong Documents) it would be impossible for us to sell sealed documents to (Der Spiegel)."

10. Produced and shown before me now is exhibit "KDL 38", a true and correct copy of portions of deposition transcript of a Mr Homer Shomer, taken on 23 April 1985. Ms Julia Dargojevic, who was also trial Counsel for Mr Armstrong and who worked closely with Mr Flynn, stated:

"MS. DRAGOJEVIC: Okay. The other thing I wanted to say is that simply by turning over these documents doesn't mean we're limiting ourselves because we consider that a number of documents which were used in the Armstrong case would be applicable to this Request for Production. Unfortunately, those documents are under seal for the present, and there's nothing I can do about producing them."

11. As has been clearly shown by the facts above, Mr Armstrong and Mr Flynn testified that they have complied with the Court Orders sealing the documents in question. If Mrs Yates got the documents from Mr Flynn as Mr Miller testifies she did, or from anyone else, she did so in violation of Court Orders and also in Breach of Confidence.

12. Obviously, if Mrs Yates would have legally had the Armstrong documents in her possession, she would have distributed them the same way she distributed the trial transcripts. In Mr Miller's affidavit, he states that Mrs Yates was to "copy and immediately" distribute the documents obtained from Mr Flynn. As is shown by the facts below, Mrs Yates only distributed the trial transcripts.

13. Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts. Nowhere in the ad does Mrs Yates offer the Armstrong documents which would obviously be of more interest to potential buyers than just the trial transcript.

14. Produced and shown before me now is exhibit "KDL 40" a true copy of the January/February 1985 edition of "The Journal of the Advanced Ability Center." Mrs Yate's ad

appears again in the classified section. As the Court can see there is no mention of any Armstrong documents for sale.

15. After reviewing all the facts put forth by the Plaintiff and after reading the inconsistent affidavits of Mr Miller and Mr Attack, there is no doubt that the documents in question in the suit were improperly obtained in violation of Court Orders and in Breach of Confidence.

The Church does not want to prevent the publication of Mr Miller's book, we just want the parts of the book taken from the documents in question removed and our copyright rights in the photographs protected.

SWORN at 23/18 Fleet St)
London EC4)

Kenneth David Long

this 8th day of October 1987)

Before me,

Mark W. L. Cook

A SOLICITOR

Mark Cook
Solicitor of the
Supreme Court

EUGENE M. INGRAM
INGRAM INVESTIGATIONS
California License Number RA9387
1212 North Vermont Avenue
Los Angeles, California 90029

November 7, 1984

To: EUGENE M. INGRAM, PRIVATE INVESTIGATOR


From: PHILLIP RODRIGUEZ, POLICE OFFICER, NORTHEAST DIVISION, CITY OF
LOS ANGELES

I hereby direct EUGENE M. INGRAM and his employees/agents or other persons acting under his direction, to intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrop upon or record such confidential communication, whether such communication is carried on among such parties in the presence of one another or by means of a telegraph, telephone or other device, for the period November 7, 1984 thru November 14, 1984; provided however, that if recordings are accomplished on any day during the above period, EUGENE M. INGRAM is to report the results to me for further direction by me.

This authorization shall specifically pertain to the investigation of GERRY ARMSTRONG, MICHAEL J. FLYNN, AND OTHERS NOT KNOWN AT THIS TIME, regarding possible criminal violations of, but not limited to, California Penal Code §664 (Attempts), §134 (Preparing False Documentary Evidence), §182 (Conspiracy) and/or any other violations of criminal laws.

This authorization is in compliance with California Penal Code §633.

Signed in Los Angeles, California, on November 7, 1984.


OFFICER PHILLIP RODRIGUEZ
SERIAL NUMBER 16924
LOS ANGELES POLICE DEPARTMENT

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EXHIBIT "A"

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EXHIBIT N

April 23, 1985

PUBLIC ANNOUNCEMENT
BY
DARYL F. GATES
CHIEF OF POLICE, LOS ANGELES

It has come to my attention that a member of the L. A. P. D. very foolishly, without proper authorization and contrary to the policy of this Department, signed a letter to Eugene M. Ingram, believed to have been drafted by Ingram himself. The letter purports to authorize Ingram to engage in electronic eavesdropping. The letter, along with all the purported authorization, is invalid and is NOT a correspondence from the Los Angeles Police Department.

The Los Angeles Police Department has not cooperated with Eugene Ingram. It will be a cold day in hell when we do.

I have directed an official letter to Ingram informing him that the letter signed by Officer Phillip Rodriguez dated November 7, 1984, and all other letters of purported authorizations directed to him, signed by any member of the Los Angeles Police Department, are invalid and unauthorized.

Internal Affairs Division is now investigating the entire incident.



THIS IS TO CERTIFY THAT I HAVE EXAMINED THE ORIGINAL OF THIS DOCUMENT AND FIND THIS REPRODUCTION TO BE A TRUE COPY OF SAME, MADE WITHOUT ALTERATIONS OR ERASURES.

By Sgt. C. Hernandez 44828
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

Dated: 5-16-85

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EXHIBIT O



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF LOS ANGELES

SPECIAL INVESTIGATIONS DIVISION

8060 CRIMINAL COURTS BUILDING

210 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012 - 3275

(213) 974-7437

RA REINER, DISTRICT ATTORNEY

April 25, 1986

Rev. Ken Hoden
Rev. Kathleen Gorgon
Rev. Heber Jentzsch
Mr. John Peterson
Mr. David Butterworth
Church of Scientology
1301 N. Catalina
Los Angeles, California 90012

Gentlemen:

In re S.I.D. CASE NO. C85-0054

In your letters dated May 1 and July 19, 1985, you asked that this office investigate your allegations that:

1. Chief Daryl Gates of the Los Angeles Police Department, Agents Al Lipkin and Al Ristuccia of the Internal Revenue Service, Gerald Armstrong, and Michael Flynn have committed the crime of conspiracy to obstruct justice.
2. Internal Revenue Service Agents Al Lipkin and Al Ristuccia additionally "aided and directed" the commission by Gerald Armstrong of violations of Penal Code Sections 182 (Conspiracy), 134 (Preparing False Evidence), and 653f (Solicitation of the commission of certain crimes).
3. Gerald Armstrong additionally prepared false documentary evidence in violation of Penal Code Section 134; committed extortion in violation of Penal Code Section 518; and solicited commission of the crimes of burglary, receiving stolen property, and forgery, in violation of Penal Code Section 653f.

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4. Michael Flynn additionally aided Gerald Armstrong in his violations of Penal Code Section 182, conspiracy, and Penal Code Section 653f, solicitation of burglary, receiving stolen property, and forgery.

Following his receipt of your letters, Steven A. Sowders, Head of the Special Investigations Division, met personally with Rev. Jentzsch and Rev. Hoden to discuss your complaint. I have since reviewed the voluminous materials you submitted in support of your charges, and I have spoken at length on the telephone and in person with church members John Peterson and David Butterworth. In our several conversations, I informed both Mr. Butterworth and Mr. Peterson that in order intelligently to evaluate the Church of Scientology's allegations, I would need further information. In addition to the documents already provided, I asked them to provide me with:

- (1) A complete description of the events to which the submitted documents relate, including:
 - (a) the time, date, and place of each event;
 - (b) the names of all persons present;
 - (c) the circumstances in which the event occurred;
 - (d) the name of each speaker and identifying information about him.
- (2) A description of the manner in which the recording or other source information was obtained.
- (3) A statement from the person who obtained the recording or other data, identifying him, describing the manner in which he obtained it, and setting forth the manner in which he could authenticate any recording and any transcript involved.
- (4) An explanation of the relevance of the conversations and other materials cited to the allegations of criminal conduct.

I further requested that they furnish any other evidence they might have in support of the Church of Scientology's allegations. I particularly requested documentation setting forth the specific facts in support of the allegations recited above. I asked that they provide the date, time, and place of each alleged event, and the name, address, and telephone number of each witness.

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In response, I received from Mr. John Peterson a letter dated September 27, 1985, which letter I discussed on October 3, 1985, with Mr. Butterworth. Thereafter, following many attempts on my part to schedule a meeting with either Mr. Peterson or Mr. Butterworth or both of them, on December 10, 1985, they came to my office and conferred with Investigator Alan Tomich and me.

In that meeting, I reiterated my need to know the date, time, and place of each alleged event, and the name, address, and telephone number of each witness. I further asked whether the Church of Scientology had any additional evidence in support of its allegations. Messrs. Peterson and Butterworth responded that they had submitted to this office all the evidence that they had.

I explained to them that, in order to decide whether a prosecutable crime had been committed, we had to interview those persons who had observed the events that were alleged to constitute the criminal conduct; and that in order to interview those persons we needed to know who they were and where we could find them. In response, Mr. Peterson repeated the suggestion he made in his letter of September 27, 1985, that we interview Eugene Ingram, who had videotaped certain events which, Mr. Peterson said, were the basis of his allegations. He declined, however, to identify, beyond the name "Joey," the persons other than Gerald Armstrong who appear on the tapes.

It was my understanding that Messrs. Peterson and Butterworth intended to review the matter and that they would subsequently forward the requested witness information to me. Their response was a letter dated December 15, 1985, which contained a witness list comprised of the names of the persons the Church of Scientology has accused plus another I.R.S. agent and two police officers. He furnished no further information.

I responded to Mr. Peterson in a letter dated January 16, 1986, in which I summarized our December 10 meeting. In it, I also asked Mr. Peterson to permit Investigator Tomich to interview Mr. Eugene Ingram (whom Mr. Peterson, as an attorney, apparently represents), and I again requested that Mr. Peterson supply us with the information outlined above.

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Page Four

In response, I received from Mr. Peterson a letter dated March 18, 1986. In it, he denied that he and Mr. Butterworth had intended, after the December 10 meeting, to provide further information, and he declared that we had received all the data he felt we needed.

It appears, then, that no further evidence in support of your allegations is forthcoming; and based on Mr. Peterson's statement on December 10, 1985, that I had understood and accurately summarized the evidence the Church of Scientology had submitted, it appears that the assertions of fact described below constitute in its entirety the evidence in support of your allegations of criminal conduct.

Allegation 1:

That Chief Daryl Gates conspired to obstruct justice.

Evidence:

The allegation of "planting a 'wire tap' on Michael Flynn" was referred to Chief Gates¹ by Assistant City Attorney Lewis N. Unger on April 17, 1985.² On April 23, 1985, Chief Gates publicly rebuked Officer Phillip Rodriguez and Investigator Eugene Ingram for video taping Gerald Armstrong. Within hours, Investigators Lipkin and Ristuccia were seen, apparently by Rev. Heber Jentzsch,³ leaving Parker Center. There has allegedly been no effort to do anything about "Mr. Armstrong's crimes."⁴ Chief Gates also initiated an investigation "into the police officer and private investigator" (July 19 letter, p. 6).

Allegation 2:

That Internal Revenue Service Agents Al Lipkin and Al Ristuccia conspired with Gates, Armstrong, and Flynn to obstruct justice and that they "aided and directed" Gerald Armstrong in the commission of violations of Penal Code Sections 182, 134, and 653f.

Evidence:

John G. Peterson declared under penalty of perjury⁵ that "Armstrong showed he was being used by the Internal Revenue Service to gather information." In support of that declaration, Mr. Peterson included "excerpts from the videotape" which indicated that "GA" mentioned Al Ristuccia and gave Al Lipkin's telephone number to "J".

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Page Five

Agents Lipkin and Ristuccia visited Officer Phillip Rodriguez and allegedly attempted to "strong arm" him. Agents Lipkin and Ristuccia stated that, on April 18, 1985, they interviewed Rodriguez, who admitted signing an authorization letter. The agents considered Rodriguez evasive and sought police assistance in obtaining his cooperation. The agents were seen leaving Parker Center on April 23, 1985.⁶

Armstrong told "J" that he had told Lipkin some people might want to talk to him,⁷ and that he had told Lipkin to go after Peterson.

Allegation 3:

That Gerald Armstrong conspired with Michael Flynnn, Daryl Gates, Al Lipkin, and Al Ristuccia to obstruct justice; prepared false documentary evidence; committed extortion; and solicited the commission of the crimes of burglary (Penal Code Section 459), receiving stolen property (Penal Code Section 496), and forgery (Penal Code Section 470), in violation of Penal Code Section 653f.

Evidence:

John Peterson declared that Armstrong conspired with a "church... staff member," was "used by...the Internal Revenue Service to gather information," "explained to the conspirators plans for attacking the church...and...Hubbard," and had a videotaped conversation with "J" which demonstrates his involvement with the government.

"GA" told "J" to type the completed staff work on the policy and bring it in, that "issues can be created," but he was "not really saying create incrimination (sic) evidence...but just to write about the speculation." He also said, "They can never tell where the issue came from." He wanted the lawsuits to end so that he could get his "global settlement."¹⁰

Armstrong told "J" about a "good-looker" named Carol. He said "the way to the man's mind is through his cock" and "that's definitely the way to get to the top." He wrote a note which reads in part, "Establish available route for holding the cock of someone in ASI/WDC/etc."¹¹

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Armstrong allegedly wrote and handed over to someone on November 9, 1984, a "shopping list" of information which he asked a "church member to purloin." "GA" told "J" "something should be done so that they can capitalize on getting stuff...into writing and...unstabilizing the whole PI, attorney apparatus." He asked if "J" could get money to Peterson and told "J" to check the finance records. He said, "if we can get anything on Ingram (or) Peterson (or) finance records (or) other PI's (or) operation 'X'...., it's all vital."

Armstrong asked for specifics on payments to Ingram, and told "J" he should find what payments went to attorneys.

The handwritten list read in part, "1. Plan on Van Schaick...4. Anything on Hubbard or Don/ 5. Anything on upcoming legal battle... 8. Get me an original of an LRH Ed (current) or other issue type which could be from Hubbard. 8a. Same for WDC. Create one, get it distributed and get an assessment. Any partial that gives UP or ORG."¹²

He also told "J" he had given one "fanatic" document "to the Feds" and was giving them another.¹³

Armstrong told "J" on November 9, 1984, that he could type "things and duplicate them and make them look exactly the same" and that "we could set up a press and...produce issues...." He thought, "shouldn't I get some I HELP materials (?)". He wanted to know "how they're run off, what the type face is like...., - because we can simply create these;... - I can create documents with relative ease...."

"J" suggested changing some documents. "GA" responded that "a lot of things can be done", but he did not propose to "be stuffing things into their comm basket." He later commented that something could be pasted and photocopied.¹⁴

Allegation 4:

That Michael Flynn conspired to obstruct justice, and aided Gerald Armstrong in the crimes of conspiracy (Penal Code Section 182) and solicitation of burglary, receiving stolen property, and forgery (Penal Code Section 653f).

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Evidence:

In April, 1985, Flynn contacted the United States Attorney in Boston, the Internal Revenue Service, and the Los Angeles Police Department. Flynn's attorney, Raul Martinez then made allegedly false accusations of wire tapping.

Flynn told the Los Angeles Police Department that "Cooley" had had a video recording and a letter signed by Officer Rodriguez authorizing such a recording. By letter, Attorney Raul Martinez, representing Mr. Flynn, asked the City Attorney to investigate. The City Attorney forwarded the letter to Chief Gates.¹⁵

John Peterson declared under penalty of perjury that evidence indicated that Michael Flynn was directing Gerald Armstrong in order to steal documents, plot forgeries, steal legal strategies, implement a plot to seduce and blackmail a Scientologist, and conspire to suborn perjury.¹⁶

The "Van Schaick" case, referred to in Armstrong's "shopping list", was settled by Attorney Flynn.¹⁷

* * *

As Mr. Peterson has noted, I have spent a considerable amount of time reviewing and comprehending the materials you have submitted to this office. For the reasons set forth below, I do not find that those materials contain sufficient evidence of the commission of any of the alleged crimes to justify the further investigation of those allegations.

At the outset, I should like to point out the following regarding Mr. Peterson's letter dated September 27, 1985 and my subsequent communications with him. 1) Mr. Peterson told me that "the interviews took place in Griffith Park during... November, 1984." He has not otherwise responded to my request for a complete description of the events to which the documents related, including times, dates, places, names, circumstances, and identifying information. (See Request #1, above.)

2) Mr. Peterson told me that "tapes are not in dispute" and that details of the taping should be sought from Gene Ingram.

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Page Eight

But when Investigator Tomich sought to follow his advice, Mr. Peterson asserted he was Mr. Ingram's attorney, and he refused to permit Investigator Tomich to interview him.

In his letter of March 18, 1986, Mr. Peterson refused further to respond to my requests for a description of the manner in which recordings and other source information were obtained; and for a statement from the person who obtained the information (some of it apparently recorded, some of it apparently from other sources) identifying that person and describing the acquisition of the information, documents, or tape, and the manner in which it could be authenticated (proved to be what it purports to be). (See Requests Nos. 2 and 3, above.)

3) He submitted "data on the background of Jerry Armstrong" and the other documents referred to in the footnotes to this letter, in which he highlighted those portions he considered relevant to the allegations. He has not otherwise explained the relevance of the submitted materials to the allegations of criminal conduct. (See Request #4, above.)

4) He told me that the individuals speaking on the video tapes are "responsible witnesses who can be produced if necessary." Beyond submitting a list of the names of the persons you have accused and three of their associates, he has not otherwise responded to my requests that he document the specific facts which prove the commission of the crimes alleged, including the particular details about each event and the names, addresses, and telephone numbers of the witnesses (See the paragraph following request #4, above).

* * *

A conspiracy to obstruct justice is an agreement between two or more persons to do an act or omit to do an act, as the result of which justice or the due administration of the laws is obstructed or perverted. To convict a person of that crime the prosecution must prove that he made such an agreement with the specific intent to commit or omit the necessary act and that, while he was a member of the conspiracy, he or a co-conspirator committed an overt act in furtherance of the object within the prosecuting jurisdiction (in our case, Los Angeles County).

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Assuming that the factual allegations are true, and that Daryl Gates did receive from Michael Flynn a wiretapping complaint; did rebuke Officer Rodriguez and Investigator Ingram; and did initiate an investigation into possible criminal conduct by Rodriguez and Ingram; that Gerald Armstrong did have the above-described conversations with "Joey"¹⁸ about Al Lipkin and Al Ristuccia; that Lipkin and Ristuccia did interview Rodriguez, did consider him evasive, did seek Los Angeles Police Department assistance in obtaining Rodriguez's cooperation, and did visit Parker Center on April 23, 1985; that Armstrong told "Joey" to type staff work in order to create issues and that he did all the other things alleged (talked to "Joey" about "Carol," told "Joey" that "they" should destabilize the "PI, attorney apparatus," told "Joey" to check financial records, wrote and delivered the "shopping list," and gave documents "to the Feds") and that Michael Flynn both personally and through his attorney contacted the United States Attorney, the Internal Revenue Service, and the Los Angeles Police Department to complain about the tape recording, the actions of Officer Rodriguez, and other matters; and that he settled the "Van Schaick" case; we are unable to find in any of those allegations any evidence which would support an allegation that Chief Gates, Agent Lipkin, Agent Ristuccia, Mr. Armstrong, or Attorney Flynn agreed with anyone to commit or omit any act which might pervert or obstruct justice or the due administration of the laws.

No factual details (time, place circumstances, names of witnesses, etc.) have been submitted to support many of the conclusions that have been alleged. Thus there is no evidence that "there has been no effort to do anything about" crimes allegedly committed by Mr. Armstrong; that the Internal Revenue Service Agents attempted to "strongarm" Officer Rodriguez; that Mr. Armstrong conspired with a church staff member and explained to the conspirators his plans for attacking the church and Mr. Hubbard; that Mr. Armstrong wrote a "shopping list" of information and asked someone to "purloin" it; or that Michael Flynn made false accusations of wiretapping.

Therefore, the evidence of which we have been apprised of a conspiracy to obstruct justice is insufficient to warrant further investigation by this office.

To convict a person of the crime of preparation of false documentary evidence, the prosecution must prove that he in fact

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made the document, that it was false, and that he intended it to be produced as true for a deceitful purpose in a proceeding authorized by law.

Even assuming that it can be proved by competent, admissible evidence that Gerald Armstrong told "Joey" to type staff work and that "issues can be created," that "they can never tell where the issue came from," and that he wanted the lawsuits to end so that he could get his "global settlement"; that Armstrong wrote and gave to someone the "shopping list"; that he told "Joey" he wanted to get "stuff...into writing" and to "unstabliz(e)" the "apparatus"; that he said getting records was "vital"; that he said he could type and duplicate things and create documents and set up a press and produce issues, that he wanted to know about a type face, that a lot of things could be done and that something could be pasted and photocopied; none of this, taken alone, constitutes evidence that Mr. Armstrong in fact created a single false document or that he intended that such a document be produced for any purpose in any legal proceeding.

Further, in the documents submitted to us, Mr. Armstrong is quoted as stating that he was not advocating the creation of incriminating evidence and that he did not propose to "be stuffing things into their comm baskets."

We are aware of no other evidence which might lend criminal significance to the statements of Mr. Armstrong. We can find, therefore, no basis for a further investigation of the allegation that Penal Code Section 134 has been violated.

Extortion (Penal Code Section 518) is the obtaining of property from another with his consent, induced by a wrongful use of force or fear. The fear may be induced by a threat to injure a person or property, or to accuse the victim or a relative of crime, or to impute to any of them a deformity, disgrace, or crime, or to expose a secret affecting any of them. Penal Code Section 524 makes it a felony to attempt to commit extortion.

Assuming that it can be proved that Gerald Armstrong expressed the views alleged regarding the "way to the man's mind" and that he wrote the note referring to "ASI" and "WDC", that does not appear to us to be evidence that he or anyone obtained or

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attempted to obtain property from anyone by means of any threat. We therefore find no basis for further investigation of the allegation that Gerald Armstrong committed extortion.

The solicitation of another person to commit or join in the commission of burglary, receiving stolen property, or forgery is a felony, the proof of whose commission requires the testimony of two witnesses or of one witness plus evidence of corroborating circumstances. To convict a person of solicitation, the prosecution must prove that he asked another person to commit a crime with the specific intent that it be committed.

The solicitation of burglary requires a request that one enter a building or other specific place (See Penal Code Section 459) intending to commit larceny or a felony; the solicitation of receiving stolen property requires a request that one receive property that one knows has been stolen; the solicitation of forgery, a request that one, with the intent to defraud, sign without authority another's name or counterfeit his handwriting, or make any of the false documents specified in Penal Code Section 470, or knowingly utter such falsified document, signature, or handwriting.

Assuming that the allegations are true that Gerald Armstrong told "Joey" to type staff work, that "issues can be created." that "something should be done so that they can capitalize on getting stuff...into writing," that "if we can get anything on Ingram (or) Peterson (or) finance records..., it's all vital," and that "Joey" should find what payments went to attorneys; and, further assuming it to be true that Armstrong gave "Joey" a list which specified "plan" or "anything" "on" certain matters and stated "get me an original...issue type"; that he told "Joey" he had given and would give documents "to the Feds," that he could duplicate things and create documents, and that something could be pasted and photocopied; these allegations nonetheless do not constitute evidence that Mr. Armstrong, with the requisite intent, asked anyone to commit the crime of burglary, receiving stolen property, or forgery. We therefore find no basis for further investigation of the allegation that Gerald Armstrong violated Penal Code section 653f.

A person aids and abets the commission of a crime if, with knowledge of the perpetrator's unlawful purpose and with the intent to encourage or facilitate the commission of the crime, he aids, promotes, or instigates its commission.

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The documents submitted to us indicate that Gerald Armstrong gave "Joey" Al Lipkin's telephone number, that he told "Joey" that he had told Lipkin some people might want to talk to him, that he told "Joey" that he had told Lipkin to go after Peterson, and that he mentioned Al Ristuccia to "Joey". The allegations regarding Michael Flynn are described above.

None of those allegations is itself evidence of any unlawful connection between those men and Mr. Armstrong. Further, since we have been presented with no significant evidence of any unlawful conduct on the part of Mr. Armstrong, we do not find that there is sufficient evidence to warrant further investigation of the allegations that Al Lipkin, Al Ristuccia, or Michael Flynn aided and abetted the commission of any crime.

In addition to the lack of evidence set forth above, it must also be noted that, lacking knowledge of the manner in which the video tape recordings were obtained, we do not know whether their acquisition violated either United States or California law. If it violated federal law, material thus acquired even if relevant - which it does not appear to be - might be inadmissible in evidence.

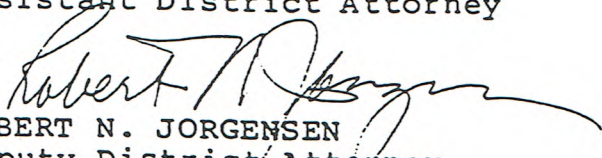
For all of the reasons described above, we have concluded that there is no evidence in support of the allegations of criminal conduct on the part of Daryl Gates, Al Lipkin, Al Ristuccia, Gerald Armstrong, and Michael Flynn. Accordingly, we shall take no further action in this matter, and our file is closed.

Very truly yours,

IRA REINER
District Attorney

CURT LIVESAY
Assistant District Attorney

By


ROBERT N. JORGENSEN
Deputy District Attorney

jeb

c: Chief Daryl Gates, L.A.P.D.
Ron Townsend, I.R.S.
Al Lipkin, I.R.S.
Al Ristuccia, I.R.S.
Gerald Armstrong
Michael Flynn

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FOOTNOTES

1. This is set forth in a document entitled "6. Obstruction of Justice".
2. See Exhibit 7 attached to "6. Obstruction of Justice."
3. See Exhibit 11 attached to "6. Obstruction of Justice."
4. See Number 1, above.
5. See document entitled "5. Conspiracy."
6. See Number 1, above.
7. See document entitled "2. Soliciting... ."
8. See document entitled "1. Soliciting... ."
9. See Number 5, above.
10. See document entitled "4. Preparation of False Documentary Evidence."
11. See document entitled "3. Extortion."
12. See document entitled "1. Soliciting... ."
13. See Exhibit 1 page 16.
14. See document entitled "2. Soliciting... ."
15. See Number 1, above.
16. See Number 5, above.
17. See Number 8, above.
18. During our December 10 meeting, Messrs. Peterson and Butterworth identified "J" as "Joey".

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Attorneys for DEFENDANT GERALD ARMSTRONG

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

CASE NO. BC 052 395
(Marin County Sup. Ct.
Case No. 152 229

REQUEST FOR JUDICIAL
NOTICE AND APPLICATION
OF COLLATERAL ESTOPPEL

DATE: 5/14/92
TIME: 8:30 A.M.
DEPT: 86

No Trial Date
No Discovery Cut-off
No Motions Cut-off

1
2 1. DEFENDANT GERALD ARMSTRONG hereby requests the Court
3 to take judicial notice of the entire file of Church of
4 Scientology v. Armstrong, Case No. C420153, affirmed on appeal,
5 232 Cal.App.3d 1060. In particular, the Court is requested to
6 take judicial notice of all factual and legal findings, by the
7 Court in the December 23, 1992 transcript of the ruling on
8 Scientology's request for injunctive relief against Defendant
9 Armstrong (Exh. F to the Opposition to Exparte Application to
10 Extend T.R.O.). In particular, Defendant asks judicial notice
11 of the following finding:

12 "And I make sure that it is the kind of clear
13 and concise order that can be the subject of a
14 contempt proceeding. So my belief is Judge
15 Breckenridge, being a very careful Judge,
16 follows about the same practice and if he had
17 been presented with the whole agreement and
18 if he had been asked to order its performance,
19 he would have dug his feet in because that is
20 one of the -- I have seen -- I can't say --
21 I'll say one of the most ambiguous, one-sided
22 agreements I have ever read. And I would not
23 have ordered the enforcement of hardly any of
24 the terms had I been asked to, even on the
25 threat that, okay, the case is not settled.

26 I know we like to settle cases. But we don't
27 want to settle cases and, in effect, prostrate
28 the court system into making an order which is
not fair or in the public interest.

29 So basically, I have to conclude based on the
30 record that there was no order; simply, he
31 wasn't presented the order. He was not asked
32 to order its performance. He didn't order its
33 performance (Exh. F, p. 52)."

34 2. Defendant further requests the Court to apply the law
35 of collateral estoppel to all factual and legal findings
36 contained in the December 23, 1992 ruling indicated above.
37 Monterey Club Mtg. Ass'n. v. Morgan, 230 Cal.App.3d 1465, 281
38 Cal.Rptr. 880 (Dismissal and/or abandonment is on the merits and

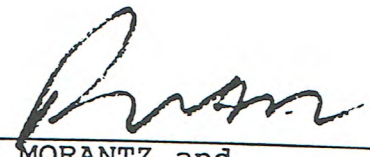
1 parties are bound by the same.); Brown v. Rahman, 231 Cal.App.3d
2 1458, (Rules apply to findings necessary to judgment, and not
3 just the judgment.); Cresino v. Fire Insurance Exchange, 215
4 Cal.App.3d, 814, 264 C.R. 30; Torrey Pines Bank v. Superior
5 Court, 216 Cal.App.3d, 813, 265 C.R. 217 (A voluntary dismissal
6 prevents re-litigating the same issues as an affirmative defense
7 brought in another action.); Lewis v. County of Sacramento, 218
8 Cal.App.3d 214 (Federal finding as to fault binding on subsequent
9 Workman's Compensation claim); Interim-insurance Exchange of the
10 Automobile Club of Southern Cal. v. Superior Court, 209 CA 3rd
11 177, 257 CR 37, (Collateral estoppel applies to issues litigated
12 and that could have been litigated.); Rymer v. Hagler, 211
13 Cal.App.3d. 1171, 260 Cal Rptr. 76 (Collateral estoppel applies
14 when the issue is litigated even though no judgment.); Barker v.
15 Hull, 236 C.R. 285 (Plaintiff's action to set aside a default was
16 collaterally estopped because issues were raised and denied in
17 motion filed in the underlying case to set aside the default.);
18 Tushinsky v. Arnold, 195 Cal.App.3d 666 (Jury made finding that
19 defendant had not believed the charges she prosecuted against the
20 plaintiff and found her guilty of malicious prosecution;
21 therefore, she could sue her attorney claiming she was relying
22 on that advice since the earlier trial litigated found she did
23 not believe the truth of the charges); Imen v. Glassford, 201
24 Cal.App. 898, 247 C.R. 514 (Issues decided in administrative
25 hearing are binding in other litigation).

26
27 ////

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1
2 Respectfully submitted,
3 Date: May 10, 1992



PAUL MORANTZ and
FORD GREENE
Attorneys for Defendant

1
2 PROOF OF SERVICE BY MAIL

3 I am a resident of Los Angeles County, am over the age of
4 eighteen, and not a party to the herein action. My business
5 address is P.O. Box 511, Pacific Palisades, California 90272.

6 On May 6, 1992, I served the within Request for Judicial
7 Notice and Application of Collateral Estoppel on the parties by
8 placing a copy of the same in a sealed envelope with postage
9 thereon and placed the same in the United States mail at Pacific
10 Palisades address as follows:

11 Andrew H. Wilson
12 WILSON, RYAN & CAMPILONGO
13 235 Montgomery Street
Suite 450
San Francisco, CA 94104

14 Laurie J. Bartilson
15 BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
16 Hollywood, CA 90028

17 Graham E. Berry
18 LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street
Suite 1200
19 Los Angeles, CA 90012

20 I declare that the above is true under the penalty of
21 perjury. Executed on May 6, 1992, at Pacific Palisades,
22 California.

23 
24 Frederica C. Schubeck
25
26
27
28

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